

IN THE  
**UNITED STATES CIRCUIT COURT OF APPEALS**  
FOR THE NINTH CIRCUIT.

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**TRANSCRIPT OF RECORD.**

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CLINTON E. WORDEN & CO. (A COR-  
PORATION), J. A. BRIGHT, T. F.  
BACON, C. J. SCHMELZ AND  
LUCIUS LITTLE,

*Appellants,*

VS.

CALIFORNIA FIG SYRUP COMPANY  
(A CORPORATION),

*Appellee.*

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**VOL. I.**

(Pages 1 to 320 inclusive.)

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Appeal from the United States Circuit Court, Ninth  
Judicial Circuit, in and for the Northern  
District of California.

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**FILED**

JAN 26 1900



Records of the  
County of Cape Verde

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*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

CLINTON E. WORDEN & CO. et al.,  
Respondents and Appellants,

vs.

CALIFORNIA FIG SYRUP CO.,  
Complainant and Appellee. )

**Order Extending Time to Docket Cause.**

Good cause appearing therefor, it is hereby ordered that the respondents and appellants in the above-entitled cause may have thirty days' time, from and after the date hereof, within which to docket the cause and to file the transcript on appeal herein.

Aug. 4, 1899.

WM. W. MORROW,  
Circuit Judge.

[Endorsed]: No. 564. United States Circuit Court of Appeals, Ninth Circuit. California Fig Syrup Co., complainant, vs. Clinton E. Worden & Co. et al., defendants. Order extending time to file transcript and docket appeal.

Filed August 4, 1899. Frank D. Monckton, Clerk, by Meredith Sawyer. John H. Miller, Attorney at law, Mills building, San Francisco, Cal.

*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

CLINTON E. WORDEN & CO. et al.,

Appellants,

vs.

CALIFORNIA FIG SYRUP CO.,

Appellee.

**Order Extending Time to File Record on Appeal and Docket  
the Cause.**

Good cause appearing therefor, it is hereby ordered that the appellants' time within which to file and docket their record upon appeal herein from the Circuit Court of the United States, for the Northern District of California, be, and the same hereby is, extended to and including October 2, 1899.

WM. W. MORROW,

United States Circuit Judge.

[Endorsed]: No. 564. United States Circuit Court of Appeals, Ninth Circuit. Clinton E. Worden & Co. et al. vs. California Fig Syrup Company. Order extending time to docket cause, etc.

Filed Aug. 31, 1899. F. D. Monckton, Clerk.



*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

CLINTON E. WORDEN & CO.,	}
Appellants,	
vs.	
CALIFORNIA FIG SYRUP CO.,	}
Appellee.	

### Stipulation as to Printing the Record.

It is hereby stipulated and agreed that the following portions of the record on appeal need not be printed and may be omitted from the printed transcript, to wit:

1. The verification of bill of complaint on page 15, and in lieu thereof may be inserted the words "duly verified."
2. Subpoena ad respondendum and the marshal's return of service on pages 16 and 17.
3. Demurrer to bill of complaint, pages 18, 19, 20, 21.
4. Order granting preliminary injunction and overruling demurrer on page 22.
5. Opinion of Court on application for preliminary injunction from and including page 23 to and including page 37.

In regard to the printing of the original exhibits it is stipulated as follows:



Complainant's Exhibits "C<sup>2</sup>," "C<sup>3</sup>," and "S," being colored advertising pamphlets, may be omitted from the printed record.

Complainant's Exhibits "K," "L," "M," "N," "O," "P," "Q," "R," "W," and "T," need not be printed in full, but may be consolidated by a general statement that the complainant published an advertisement in the periodicals named, and giving the year, which contained the following statement, and insert therein so much of the advertisement as refers to figs.

Complainant's Exhibit "J," being articles of incorporation of complainant, also Defendant's Exhibits Nos. 14<sup>a</sup> and 14<sup>b</sup> and 15 may all be omitted from the printed record.

JOHN H. MILLER,  
Solicitor for appellants.  
WARREN OLNEY,  
Solicitor for appellee.

[Endorsed]: No. 564. United States Circuit Court of Appeals for the Ninth Circuit, Northern District of California. Clinton E. Worden & Co., appellants, vs. California Fig Syrup Co., appellee. Stipulation as to printing the record.

Filed Dec. 20, 1899. F. D. Monckton, Clerk. John H. Miller, attorney at law, Mills building, San Francisco, Cal., for appellants.

*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

CLINTON E. WORDEN & CO.,	}
Appellants,	
vs.	}
CALIFORNIA FIG SYRUP CO.,	
Appellee.	

**Notice as to Printing.**

Notice to Warren Olney, counsel for appellee, and to the clerk of the above entitled Court:

You are hereby notified that the specification of errors hereunto annexed, constitutes a statement of the errors on which the appellants intend to rely on this appeal; and you are further notified that the parts of the record which the appellants think necessary for the consideration thereof, are, and constitute and comprise, the whole of the record as filed with the clerk of the Court, save and except the following parts and portions thereof, to wit:

1. Those parts and portions covered by the stipulation between counsel for the respective parties now on file with the clerk, whereby it was stipulated and agreed that the parts and portions of the record, specified in said stipulation might be omitted from the printed record.

2. The bond on appeal, appearing at pages 594 and 595 of the typewritten record.

3. The order of Court allowing withdrawal of original exhibits, appearing at page 596 of typewritten record.

4. The deposition of W. S. Dreypolcher, included between pages 251 and 254 of the typewritten record.

5. The deposition of A. B. Smith, appearing between pages 254 and 259 of the typewritten record.

6. The deposition of Henry Michaels, appearing between pages 213 and 229 of the typewritten record.

7. The deposition of W. P. Reddington, appearing between pages 229 and 251 of the typewritten record.

8. The deposition of William Pinniger, appearing between pages 449 and 456 of the typewritten record.

9. The deposition of C. J. Brochens, appearing between pages 456 and 467 of the typewritten record.

10. The deposition of J. A. Bright, appearing between pages 516 and 541 of the typewritten record.

11. The deposition of Truman F. Bacon, appearing between pages 541 and 554 of the typewritten record.

12. The deposition of Richard E. Queen, appearing between pages 554 and 559 of the typewritten record.

13. Complainant's exhibit "W," being an advertisement in the Cleveland "Press" of April 12, 1898.

14. Complainant's exhibit "T," being a newspaper article from the San Francisco "Examiner."

15. Complainant's exhibit "C," being an advertisement from the Cleveland "Leader" of February 1, 1896.

16. Complainant's exhibit "C<sup>1</sup>," being an advertisement from the Louisville "Post" of April 26, 1896.

17. Respondents' exhibit No. 7, being a bill from Clinton E. Worden & Co. to Lucius Little.

18. Respondents' exhibit No. 8, being original sketch for a label.

19. Respondents' exhibit No. 9, being a loose label of the Yetiva Drugstore.

20. Respondents' exhibit No. 17, being an advertisement of the California Fruit Syrup Company on wrappers for bottles.

21. Respondents' exhibit No. 11, being order from Lucius Little to Clinton E. Worden & Co.

22. Respondents' exhibit No. 10, being small, loose labels of the Yetiva Drugstore.

You are further notified that upon the hearing of this appeal, the appellants will not dispute the manufacture and sale by Clinton E. Worden & Co. to the other defendants of the medicinal preparation, to which are attached the labels held by the Court to be an infringement of the appellee's rights, nor will the appellants dispute or deny the sale of said article by the other appellants to the public, for which reason appellants deem the above specified portions of the record to be immaterial to any issue in the case.

Dated at San Francisco, this thirtieth day of December, 1899.

JOHN H. MILLER,  
Counsel for appellants.

*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

CLINTON E. WORDEN & CO.,  
Appellants,  
vs.  
CALIFORNIA FIG SYRUP CO.,  
Appellee.

**Specification of Errors.**

Now, comes the appellants in this case, and make and file with the clerk of the Court, the following as a statement of the errors on which said appellants intend to rely upon this appeal, to wit:

1. Error of the lower Court in granting and continuing the injunction, so far as it relates to the words "Syrup of Figs" and "Fig Syrup," to be used as a liquid laxative medicinal compound.

2. Error of the lower Court in granting and continuing the injunction, so far as it relates to the making, using, and selling of any liquid laxative medicine, marked with the name "Syrup of Figs" or "Fig Syrup."

3. Error of the lower Court in holding that the complainant was entitled to a trademark in the name of "Syrup of Figs" or "Fig Syrup," as applied to a liquid laxative medical compound.

4. Error of the lower Court in holding that the use of the name "Syrup of Figs" or "Fig Syrup" by the respond-

ent upon respondents' liquid laxative medical compound was unfair competition by respondent with complainant's business.

5. Error of the lower Court in not holding that the name "Syrup of Figs or "Fig Syrup" is descriptive, and, if not descriptive, is deceptively used by complainants with intent and purpose of deceiving the public, and that the public was so deceived.

6. Error of the lower Court in not holding that the packages and advertisement of complainant represent that the complainant's preparation is a laxative fruit syrup, made from the juice of the California figs.

7. Error of the lower Court in not holding that the ordinary purchaser believes, when purchasing complainant's article, that he is purchasing a laxative preparation of which the essential ingredient is the California fig.

8. Error of the lower Court in not holding that the ordinary purchaser would be deceived to his harm by the statements on complainant's advertisements and packages.

9. Error of the lower Court in not holding that there were material misrepresentations in the name of complainant's preparation and in complainant's labels, bottles and packages and advertising matter.

10. Error of the lower Court in holding that the name "Syrup of Figs" or "Fig Syrup" is a name known to the drug trade, to the medical profession and to the public, as meaning only the preparation of complainant.

11. Error of the lower Court in holding that the respondents had been guilty of fraud and deceit in giving



the name "Syrup of Figs" or "Fig Syrup" to its preparation.

12. Error of the lower Court in holding that the complainants invented the name "Syrup of Figs" or "Fig Syrup."

13. Error of the lower Court in holding that the equities in this case were in favor of complainant and against respondent.

14. Error of the lower Court in holding that the testimony shows that the respondents had, and could have, no other object in adopting for its preparation the name "Syrup of Figs" or "Fig Syrup," than to trade upon the popularity of complainant's preparation to defraud complainant of the fruits of complainant's skill, labor and expenditures in establishing a reputation for complainant's preparation, and to pass off respondent's preparation as that of complainant's, and to trade on complainant's advertising, and the good will of complainant's business by unfair competition, and that nothing appears from which the Court can find that the complainant had been guilty of moral wrong such as to deprive it of the protection of a Court of equity.

15. Error of the lower Court, in holding that the respondents had been guilty of unfair competition in trade.

16. Error of the lower Court, in awarding an injunction against further use of the name "Syrup of Figs" or "Fig Syrup."

17. Error of the lower Court in awarding an injunction against unfair competition in trade by respondents.

18. Error of the lower Court in rendering a decree for

an accounting of damages in favor of complainant and against respondents.

19. Error of the lower Court in awarding an accounting of profits, realized by respondents in favor of complainant and against respondents.

20. Error of the lower Court in not dismissing the bill of complaint, and entering a final decree in favor of respondents for their costs.

The above constitutes a statement of the errors on which the appellants intend to rely upon this appeal.

Dated at San Francisco, this thirtieth day of December, 1899.

JOHN H. MILLER,  
Counsel for appellants.

Service of the within notice and specifications of error, admitted this thirtieth day of December, A. D. 1899.

WARREN OLNEY,  
Counsel for appellee.

[Endorsed]: No. 564. United States Circuit Court of Appeals, Ninth Circuit. Clinton E. Worden & Co., appellants, vs. California Fig Syrup Co., appellee. Notice and specifications of error on appeal.

Filed January 2, 1900. F. D. Monckton, Clerk. John H. Miller, attorney at law, Mills building, San Francisco, Cal., for appellant.



*In the United States Circuit Court of Appeals, for the Ninth  
Circuit.*

CLINTON E. WORDEN & CO.,	}
Appellants,	
vs.	}
CALIFORNIA FIG SYRUP CO.,	
Appellee.	

**Notice to Print Documents in Record.**

To John H. Miller, counsel for appellants, and to the clerk  
of the above entitled Court:

You are hereby notified that the appellee consents to  
the omission from the printed record of those portions of  
the record, filed with the clerk and mentioned in the no-  
tice by appellants, served upon the counsel for the ap-  
pellee on the thirtieth day of December, 1899, as follows:

Nos. 1, 2, 3, 17, 18, 19, 20, 21, and 22.

You are further notified that the appellee does not con-  
sent to the omission from the printed record of those  
parts of the record, now on file with the clerk and num-  
bered in said notice as follows, to wit:

Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, and  
the appellee does hereby insist upon all said record being  
printed, except those portions thereof to which express  
consent is given for the omission thereof.

Dated at San Francisco, this fourth day of January, 1900.

OLNEY & OLNEY,  
Solicitors for appellee.  
WARREN OLNEY,  
Of counsel for appellee.

Due service of the within, this fourth day of January, A. D. 1900, is hereby admitted.

J. H. MILLER,  
Attorney for appellant.

[Endorsed]: No. 564. In the United States Circuit Court of Appeals, for the Ninth Circuit, State of California. Clinton E. Worden & Co., appellant, vs. California Fig Syrup Co., appellee. Notice to print documents in record.

Filed January 6, 1900. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk. Olney & Olney, solicitors for appellee, 101 Sansome street, San Francisco, Cal.

*In the Circuit Court of the United States, in and for the Ninth  
Circuit, Northern District of California.*

CALIFORNIA FIG SYRUP COM- PANY (a Corporation),	}	Complainant.
vs.		
CLINTON E. WORDEN & CO. (a Cor- poration), J. A. BRIGHT, T. F. BACON, E. LITTLE, C. J. SCHMELZ, and LUCIUS LITTLE,	}	Defendants.

**Bill of Complaint.**

To the Honorable, The Judges of the Circuit Court of the  
United States, in and for the Ninth Circuit, Northern  
District of California:

Now, comes the California Fig Syrup Company, a corporation, duly created and existing under and by virtue of the laws of the State of Nevada, and brings this bill of complaint against the Clinton E. Worden & Co., a corporation, created and existing under the laws of the State of California, a citizen of the State of California, and having its chief office and place of business in the city and county of San Francisco, State of California; and against J. A. Bright, T. F. Bacon, E. Little, C. J. Schmelz and Lucius Little, each and all of whom are citizens of the

State of California, residing and doing business within the Northern District of California; and thereupon your orator, the California Fig Syrup Company, humbly complaining, shows unto your Honors:

That your orator, the California Fig Syrup Company, is a citizen of the State of Nevada, and has its chief office and place of business in the city of Reno, county of Washoe, State of Nevada, and has offices at San Francisco, California; Louisville, Kentucky; New York, N. Y.; in Montreal, Dominion of Canada, and in London, England.

That the defendant, Clinton E. Worden & Co., is a corporation, organized under the laws of the State of California, and is a citizen of the State of California, having its office and principal place of business in the city and county of San Francisco, State of California, within the Northern District of California.

That J. A. Bright, T. F. Bacon, E. Little, C. J. Schmelz, and Lucius Little are each and all citizens of the State of California, residing and doing business in the city and county of San Francisco, State of California, and within the Northern District of said State. That the defendants, Lucius Little and E. Little are, as your orator is informed and believes, husband and wife.

Your orator further shows unto your Honors that heretofore, to wit, in the year 1879, one Richard E. Queen invented a certain medical preparation or remedy for constipation, and to act upon the kidneys, liver, stomach and bowels, which medical compound is a combination in solution of plants, known to be beneficial to the human system, forming an agreeable and effective laxative to

cure habitual constipation and many ills, depending upon a weak and inactive condition of the liver, kidney, stomach and bowels, and that this preparation has found favor with physicians throughout the country and with the public at large, and is, and for many years last past has been sold in large quantities throughout the United States, Canada, England, and other countries, and throughout the State of California.

That shortly subsequent to the aforesaid invention your orator was incorporated, and thereupon said Richard E. Queen sold, transferred, and assigned all his right, title and interest in and to the said medical compound, and in and to the trade name, trademarks and good will of said compound to your orator.

That ever since said incorporation, continuously up to the present time, your orator has been and now is engaged in the manufacture and sale of said medical preparation or remedy.

Your orator further states that this laxative medical compound, or preparation, made and put up as aforesaid by your orator, has always been marked, named and called by your orator "Syrup of Figs," being advertised under that name by your orator, the name "Syrup of Figs," being printed or otherwise marked upon every bottle of this preparation made and sold by your orator, this name being also printed upon the boxes, packages or wrappers in which the bottles of this preparation are packed for shipment and sale; that it has been the practice of your orator to put the bottles containing this preparation in oblong pasteboard boxes or cartons, so that they will reach the consumer in that form; that in

all instances, not only the bottle which contains this preparation, but the box or carton which contains the bottle of this preparation, is marked with the words "Syrup of Figs," and also contains printed matter stating that this preparation is a medical laxative preparation, and also giving a general idea of its uses and purposes.

Your orator further states that the box or carton filed herewith, and marked "Exhibit A," truly represents the box or carton, which your orator uses, as a case or wrapper for its said laxative preparation; and that it is in such a box or carton that your orator's said preparation is exposed for sale to the consumer. Your orator further states, that the bottle in said carton "Exhibit A," which bottle is marked "Exhibit B," is a bottle of your orator's said laxative preparation, as marked and put up for sale by your orator, and the same is, and for many years last past has been, marked and put up for sale by your orator.

Your orator further states that it, and its said predecessor in interest, were the first to prepare a liquid laxative preparation or medicine, and marked or designated the said "Syrup of Figs," or "Fig Syrup."

Your orator further states that it, and its said predecessor in interest, were the first to pack and dress, or mark a liquid laxative preparation or medicine in the manner illustrated by said Exhibits "A" and "B"; that is to say, in an oblong, rectangular box or carton, with statements of the virtues of this preparation printed in different languages upon the back and sides of the carton, and having on the front of the carton, and on the border within which, at the top, is a representation of a branch



of a fig-tree, bearing fruit and leaves, surrounded by the words "Fig Syrup Company," or "California Fig Syrup Company," and below which appear in larger letters the words "Syrup of Figs," and below these last-named words appears a brief statement of the virtues of this preparation, together with the words "Manufactured only by the California Fig Syrup Company."

Your orator further states that it, and its predecessor in interest, were the first to put up a liquid laxative preparation in an oblong rectangular glass bottle, having on it a label with the words "Syrup of Figs," and directions for use; all as shown by Exhibit "B," said bottle being put in a carton or box like Exhibit "A."

Your orator further shows unto your Honors that it and its predecessors in interest was the first person, firm or corporation, engaged in the manufacture of a liquid laxative preparation, to adopt the business name of California Fig Syrup Company, or Fig Syrup Company, or a business name of which the words "Fig Syrup" were a part; and that in consequence, and as it was the first to manufacture a liquid laxative medicine and name it "Fig Syrup," or "Syrup of Figs," the complainant corporation is indifferently known by the trade and public as the "California Fig Syrup Company," "Fig Syrup Company," and "Syrup of Figs Company," to such an extent that business letters to your orator, ordering its said preparation, or on any business of said company, are frequently addressed to it under any one of said names.

Your orator further states that it has spent large sums of money, to wit, more than one million dollars (\$1,000,000) in advertising said preparation, always under the

name of "Syrup of Figs," or "Fig Syrup," throughout the United States and other countries, thus making the same and its merits known to the public to such an extent that it has become a household word; that this preparation in consequence has become known as a liquid laxative medicine, so as to be distinguished from all other medicines of the same general character, under the name of "Syrup of Figs," and that its merits and popularity are so well established that many millions of bottles of your orator's preparations have been sold, always under the name of "Syrup of Figs" or "Fig Syrup," and that in the last twelve months more than two millions (2,000,000) bottles of your orator's said preparations have been sold; and your orator further states that the good name of said preparations is gaining in popularity and in the confidence of the public to such an extent that the demand for the same is increasing each day; and that now, and for years past, this preparation of your orator's manufacture, "Syrup of Figs," or "Fig Syrup," has been one of the principal articles of sale, and a part of the stock of almost every druggist in the United States.

Your orator further states that among other methods of advertising, for years past it has caused to be inserted in the various newspapers throughout the United States and other countries, and in the leading magazines and periodicals in the United States, and other countries, and particularly in the newspapers in California, and in the cities of San Francisco and Oakland, California, advertisements of this preparation, illustrated by Exhibit "C," and Exhibit "C<sup>1</sup>," and Exhibit "C<sup>2</sup>," filed herewith.



Your orator further states that by virtue of the premises, it has acquired the exclusive right to the name "Syrup of Figs," or "Fig Syrup," as it is indifferently called by the public, or any colorable imitation of the same, as applied to a liquid laxative medical preparation, irrespective of the form of bottle or package in which it may be sold to the public.

That by virtue of the premises your orator has acquired the exclusive right to the manner and form of packing the same for sale, in connection with the words "Syrup of Figs" or "Fig Syrup," as illustrated by Exhibits "A" and "B," filed herewith, or any colorable imitation of the same; that by virtue of the premises it has acquired the exclusive right to the words "Syrup of Figs," or "Fig Syrup," or any colorable imitation of the same, as a part of the business name of a concern making a liquid laxative medical compound.

Your orator further shows unto your Honors that, on account of the care, skill and fidelity with which it has and does prepare this, its said laxative preparation or medicine, and by reason of the steady and increasing demand for the same, and the large sums of money spent in advertising and in introducing the same, and making it known to the public, your orator's good will in the manufacture of this preparation, marked and addressed as aforesaid, is of great value, to wit, of the value of one million dollars (\$1,000,000.00).

Your orator further shows unto your Honors that the defendant, Clinton E. Worden & Co., well knowing all the premises, and that your said orator's said preparation has attained a great popularity and a large sale on account

of its merits as a liquid laxative compound for the human system, and desiring and intending to perpetrate a fraud upon your orator's aforesaid rights, and to trade to its own profit and advantage upon the reputation, created as aforesaid by your orator's preparation, and desiring to impose a worthless production upon the public, as and for your orator's said preparation, has prepared, as your orator is informed and believes, a preparation, and put it up in packages resembling in form your orator's said preparation, has called said preparation "Syrup of Figs," and is palming off the same, or causing the same to be palmed off upon the public as and for your orator's said preparation, and upon the valuable reputation which your orator has created for its said medical laxative preparation.

And in that behalf your orator further alleges upon its information and belief that said defendant, Clinton E. Worden & Co., has caused to be made and put up and sold, and offered for sale, a liquid laxative medical compound, resembling your orator's said preparation, under the name "Syrup of Figs" and "Fig Syrup," and marking the boxes, or packages, containing the same with the name "Fig Syrup" or "Syrup of Figs"; and it has caused to be made and put up said preparation, under said name, in bottles and packages or cartons, so closely in imitation of your orator's bottles and packages (Exhibits "A" and "B"), as to be likely to deceive the ordinary purchaser in buying defendant's preparation for that of your orator, and so as to enable unscrupulous retail dealers to palm off said defendant's preparation on the consumer as and for your orator's said preparation.

And in that behalf your orator further alleges that said defendant, Clinton E. Worden & Co., as your orator is informed and believes, has put up and offered for sale and sells a compound, claiming to be a liquid laxative medical preparation, and encloses it in bottles and packages very similar in size to the bottles and packages prepared and sold by your orator, and has marked the same with the words "Syrup of Figs," and has stated and declared on the outside carton, or paper box, containing said bottles, words importing the meaning and statement that the same is prepared and sold by a "Fig Syrup Company." On some bottles the statement is made by the said defendant to the effect that said preparation is made by "The San Diego Fig Syrup Company, San Francisco, Cal." On other bottles the statement is made to the effect that said preparation or compound is made by the "Fig Syrup Company, San Francisco, Cal." On other bottles, the statement is made that said preparation is manufactured by the "San Francisco Fig Syrup Company, San Francisco, Cal." On other bottles, the statement is made to the effect that the compound is prepared by the "New York Fig Syrup Company, New York City, N. Y." And again, on other bottles, the statement is made that it is "Prepared by Yetiva Drug Company, Louisville, Kentucky." And, again, on other bottles, said defendant makes the statement that the preparation is manufactured by the "Laxative Fig Syrup Company, New York City, N. Y."

That in truth and in fact, as your orator is informed and believes, there is no corporation, copartnership, or firm, except your orator, doing business under the name

of "Fig Syrup Co.," and said statements made upon said bottles by the said defendant are intended to deceive the public, and induce them to believe that the compound prepared by said defendant is prepared by your orator.

That, as your orator is informed and believes, customers are deceived by said statements, and are induced to purchase said compound prepared by the said defendant, Clinton E. Worden & Co., in the belief that they are purchasing the liquid laxative medicine, prepared and sold by your orator.

That the other defendants herein named, except Clinton E. Worden & Co., are druggists, doing business in the city and county of San Francisco, State of California, and, knowing that the compound put up and sold by the defendant, Clinton E. Worden & Co., is not manufactured by your orator, and is not put up or sold by your orator, and with the intent and purpose of deceiving their customers, are selling to customers the liquid laxative compound prepared by the defendant, Clinton E. Worden & Co., as and for the medical preparation made and sold by your orator.

That your orator's said preparation has become so well known, that when a person desires to purchase the same, the ordinary method is to go to a drug store and call for "Syrup of Figs," or "Fig Syrup." That the defendants, other than the said Clinton E. Worden & Co., are in the habit, as your orator is informed and believes, when a customer calls for "Fig Syrup," or "Syrup of Figs," to offer for sale to such customer a bottle or package of the spurious compound made by Clinton E. Worden & Co., as aforesaid, and recommend the same to such purchaser,

and, unless the purchaser is fully acquainted with the names and style of packages put up by your orator, such purchaser is liable to be deceived, and frequently has been deceived and induced to buy said compound prepared by the said Clinton E. Worden & Co., and retailed to customers by the other defendants, as hereinabove set out.

Filed herewith are bottles and packages of the preparation made by the defendant, Clinton E. Worden & Co., and sold to retail buyers by the other defendants, as hereinabove set out. Said bottles and packages are marked Exhibits "D," "E," "F," "G," "H," and "I."

That said defendant, Clinton E. Worden & Co., have put up their bottles and packages in such a close imitation of the packages prepared by your orator, as to cause the retail purchaser of "Syrup of Figs" or "Fig Syrup," who calls for the article of your orator's manufacture under said name, to at once conclude when he is handed a bottle of defendant's preparation, marked as aforesaid, that he has the original article of your orator's manufacture, which he has seen advertised.

Your orator further states that the intent and the actual effect of the aforesaid action of the defendant, Clinton E. Worden & Co., and of the other defendants, is to perpetrate a fraud on your orator in its business in the manufacture of this liquid laxative preparation, and also upon the public, by causing a confusion in the trade between your orator's said laxative medicine, or preparation, and that of defendant's, and by causing said defendant's said preparation to be sold on the reputation of your orator's said laxative preparation, and by putting it in

the power of unscrupulous retail druggists to palm off upon the consumer the defendant's said preparation, as and for the preparation of your orator.

Your orator further states, upon its information and belief, that in order that said fraud may be the more effectually carried out as an inducement to the retail druggist to buy of the defendant, the Clinton E. Worden & Co., and make a greater profit thereby, the said defendant, Clinton E. Worden & Co. sells its preparation to the retail druggists at a much lower price than the price established by your orator for its said preparation, so that it is to the pecuniary interest of the dishonest retail dealer to buy said fraudulent preparation, and palm it off on the unsuspecting public as and for your orator's preparation.

Your orator states that, although the defendants, knowing the premises, they have deliberately and fraudulently conspired together, as your orator is informed and believes, to perpetrate the frauds upon your orator, hereinbefore set forth.

And your orator further states that it has been greatly injured in its business in the manufacture of this, its liquid laxative preparation "Syrup of Figs" or "Fig Syrup," and that your orator is unable to say, but it verily believes that it has suffered damage and injury by reason of the acts of the defendants aforesaid, to the extent of at least ten thousand dollars (\$10,000.00); but your orator states that this is a continuing wrong, and one which it is impossible to exactly calculate, and one which, if permitted to continue, will work irreparable injury to your orator.



In consideration whereof, and inasmuch as your orator cannot have adequate redress at law and is without complete remedy, save by the aid and interposition of this Court as a Court of equity, your orator respectfully prays your Honors to grant a perpetual writ of injunction, issuing from this Court under the seal of this Court, enjoining the defendants, Clinton E. Worden & Co., a corporation, and the defendants, J. A. Bright, T. F. Bacon, Lucius Little, E. Little, and C. J. Schmelz, and each and all of them, their agents, servants, attorneys, solicitors and counselors, from manufacturing, selling, or offering for sale, directly or indirectly, any liquid laxative medical preparation, marked with the words "Syrup of Figs," or "Fig Syrup," or marked with any words which may be a colorable imitation of the name "Syrup of Figs" or "Fig Syrup," and from putting up, selling, or dealing in any liquid laxative medical preparation which shall have a tendency to deceive the public and induce buyers to purchase the defendant's preparation, believing the same to be the preparation of your orator.

That your Honor may also grant a perpetual writ of injunction under the seal of this honorable Court, against the said defendants above named, and each and all of them, their agents, attorneys, solicitors and counselors, from manufacturing, selling, or offering for sale any such preparation, dressed or packed in bottle or cartons so as to be colorable imitations of the liquid laxative preparation, "Syrup of Figs or "Fig Syrup," as put up in bottles or cartons by your orator, and from putting up for sale, or selling, or offering for sale any liquid laxative preparation with or without the name "Syrup of Figs" or "Fig

Syrup" in a bottle or carton in imitation of the manner in which your orator's said liquid laxative preparation is put up for sale, and that each and all of said defendants, their agents, servants, attorneys, solicitors and counselors, be perpetually enjoined from using the words "Fig Syrup Company" as a business name, or from using the words "Fig Syrup" or "Syrup of Figs," as part of the business name, in connection with the manufacture and sale of a liquid laxative preparation.

Your orator also prays that your Honors may grant a preliminary injunction, issuing under the seal of this honorable Court, and pending the hearing of the application for perpetual injunction, and on the filing of this bill of complaint, a temporary restraining order under the seal of this honorable Court, enjoining the said defendants, and each of them and all of them, their agents, servants, attorneys, solicitors, counselors and workmen, from making, selling, or offering for sale, directly or indirectly, any liquid laxative preparation under the name "Syrup of Figs" or "Fig Syrup," or under any name in colorable imitation of the name "Syrup of Figs" or "Fig Syrup," and from making, selling, or offering for sale, directly or indirectly, any medical liquid laxative preparation put up in bottles, boxes, or packages, similar in form and arrangement to the bottles or packages used by your orator in the manufacture and sale of its said liquid laxative preparation, or so closely resembling the bottles or packages used by your orator, as to be calculated to deceive the public; and from using the name "Fig Syrup Company," or from using a name whereof the words "Fig Syrup" or "Syrup of Figs Company" form a



part, as a business name in connection with the manufacture of a liquid laxative preparation.

Your orator further prays that the defendants, and each and all of them, may be made to account before a Master of this Court for all profits, gains, or advantage which defendants, or any of them, may have derived by reason of the infringement of the good will of your orator's business in the manufacture and sale of said liquid laxative preparation, and that the defendants above named, and each and all of them, may be ordered to pay over to your orator all the gains and profits which they, or any one of them, may have made by reason of the infringement of the good will of your orator's business in the manufacture and sale of said liquid laxative preparation as herein complained; and that the defendants above named, and each and all of them, may be made to account to your orator for all damages, caused to your orator by reason of the aforesaid unlawful acts of said defendants, or any or all of them.

And your orator prays for such other and further relief in the premises as to your Honors may seem meet and may be agreeable to equity and good conscience.

May it please your Honors to grant unto your orator writs of subpoena, issuing out of and under the seal of this Court, to be directed to the said Clinton E. Worden & Co., J. A. Bright, T. F. Bacon, E. Little, Lucius Little and C. J. Schmelz, respectively, commanding said defendants respectively, on a certain day and under a certain penalty in said writs to be inserted, to be and appear before your Honors in this Court, then and there to answer the premises and to abide by and perform such order and

decree therein as to your Honors may seem meet, and shall be agreeable to equity and good conscience; and your orator prays that it may have costs and charges in this behalf paid by the defendants.

OLNEY & OLNEY,

Solicitors for said orator.

[Duly Verified.]

[Endorsed]: Filed June 1, 1897. W. J. Costigan, Clerk.

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*In the Circuit Court of the United States, for the Northern  
District of California.*

CALIFORNIA FIG SYRUP CO.,	}
Complainant.	
vs.	}
CLINTON E. WORDEN & CO. et al.,	
Defendants.	

The Joint and Several Answer of all the Defendants to the Complainant's Bill of Complaint Against Them Exhibited.

These defendants, saving and reserving to themselves, now and at all times hereinafter mentioned, all and all manner of benefits and advantage of exception, which can or may be had or taken to the said complainant's said bill of complaint, for answer thereto, or to so much thereof as these defendants are advised, is any wise material or necessary for them to make answer unto, answering say:

That they do not know, and that they are not informed except by said bill of complaint, whether the California Fig Syrup Company is a citizen of the State of Nevada, or has its chief office and place of business in the city of Reno, county of Washoe, State of Nevada, and, therefore, they leave the complainant to make such proof thereof as it may deem necessary and proper.

Admit that the defendant, Clinton E. Worden & Co., is a corporation, organized under the laws of the State of California, having its office and principal place of business in the city and county of San Francisco, State of California.

Admit that the other defendants are citizens of the State of California, residing in the city and county of San Francisco, aforesaid.

And these defendants, further answering, say that they are not informed, save by the said bill of complaint, whether in the year 1879, or at any other time, Richard E. Queen, mentioned in the bill of complaint, invented the certain medical preparation or remedy referred to in the bill of complaint, or that the same was or is a combination in solution of plants, known to be beneficial to the human system, or that the same is a cure for any human ills, or that the same has found favor with physicians or the public, and, therefore, and on that ground, these defendants leave the complainant to make such proofs in that regard as they may deem proper.

And these defendants are not informed save by said bill of complaint, whether the said Queen sold, transferred, and assigned his right, title and interest in and to said medical compound, and in and to the trade name,

trademark and good will of said compound to complainant, and, therefore, and on that ground, these defendants leave the complainant to make such proof in that regard as they may deem proper.

And, further answering, these defendants admit that the said medical compound has always been marked, named and called by the complainant "Syrup of Figs," and advertised under that name, and that the said name has been printed or otherwise marked upon every bottle of said preparation, made and sold by complainant, and also printed upon the boxes, packages or wrappers in which the bottles are packed, and that it has been the practice of complainant to put the bottles containing said preparation in oblong pasteboard boxes or cartons, and that in all instances not only the bottles which contained the preparation, but the boxes or cartons which contained the bottles were marked with the words "Syrup of Figs," and also contained printed matter, stating that the preparation was a medical laxative preparation, and giving a general idea of its use and purposes.

Admits that the box or carton filed in this case and marked Exhibit "A" represents the box or carton which the complainant was using at the commencement of this suit as a case or wrapper for its said laxative preparation, and that in such a box or carton complainant's preparation was ordinarily exposed for sale to the consumer, and that the bottle in said carton, which bottle was marked Exhibit "B," is a bottle of complainant's said preparation as marked and put up for sale by complainant, but in this behalf these defendants aver that the said box or carton marked Exhibit "A," in the form

in which it there appears, has been used by the complainant only for a comparatively short period of time, and that, when the complainant first began to prepare and sell said compound, and for many years continuously thereafter, said complainant sold said preparation in boxes, cartons, wrappers, and labels, different from Exhibit "A" in this: that they contained upon their face in prominent type many false and fraudulent statements, concerning said preparation, which tended to deceive and were made for the purpose of deceiving the public at large, and the users of said compound, and, amongst other things, was the statement that said preparation was the "California Liquid Fruit Remedy," and that the same "presents in the most elegant form the laxative and nutritious juice of the figs of California," all of which statements were false, fraudulent and deceptive, and were made for the purpose of deceiving the public and the users of said medical compound; that by reason of said false and fraudulent statements upon said labels, complainant built up a large business in the sale of said compound, and was enabled to sell, and did sell, vast quantities of the same throughout the world on the strength of said representations, whereby the said preparation became known throughout the world as the "California Liquid Fruit Remedy," and was supposed by the public at large and consumers thereof to be a California liquid fruit remedy and to be composed largely of the nutritious juices of the California figs, and it is only by virtue of such representations that the said medicine became known and acquired a reputation throughout the world; that after the said medicine had so become known and



acquired its said reputation throughout the world, and complainants had sold vast quantities thereof and realized vast profits from such sale, all of which had been induced, caused and brought about by reason of said fraudulent, false and deceptive statements and representations contained on said boxes, wrappers and labels, but not until within a short time prior to the commencement of this suit the complainant removed from its boxes, labels and wrappers the statement that the preparation was the California Liquid Fruit Remedy, and that it "Presents in the most elegant form the laxative and nutritious juice of the figs of California," and in lieu thereof adopted and used the label or wrapper, Exhibit "A," filed with the bill of complaint herein, and printed in small type thereon the words "The juice of figs in the combination is to promote the pleasant taste"; but in this behalf these defendants aver that said last named statement is not only false, fraudulent and deceptive, but was placed upon said labels for such purpose; that the juice of figs in said combination was not and is not to promote the pleasant taste; that there is practically no juice of the figs whatever in said compound; these defendants are advised and informed that there is an infinitesimal proportion of figs in said preparation, put there solely for the purpose of enabling the complainant to say that the preparation contains figs, and for no other purpose; that the presence of said infinitesimal quantity of figs in said preparation is not perceptible and has no effect on said combination and does not add anything to its medical or other qualities, does not affect the taste of the compound in any

way whatever, does not promote a pleasant taste therein, is not perceptible to the taste.

Wherefore, these defendants aver that the said label still contains upon its face a false, fraudulent and deceptive statement of facts which materially induces the users of said medicine to purchase the same, and by reason of such fact complainant is disentitled to any relief in equity.

And, further answering, these defendants say that they do not know and they are not informed, save by said bill of complaint, whether complainant and its predecessors in interest were the first to prepare a liquid laxative preparation or medicine and marked or designated the same "Syrup of Figs" and "Fig Syrup," and therefore these defendants leave complainant to make such proofs in that regard as it may deem proper.

And, further answering, these defendants say that they do not know, and they are not informed, save by said bill of complaint, whether the complainant and its said predecessor in interest were the first to pack and dress or mark a liquid laxative preparation or medicine in the manner illustrated by said Exhibits "A" and "B"; that is to say, in an oblong rectangular box or carton with statements of the virtues of this preparation printed in different languages upon the back and sides of the carton, and having on the front of the carton and on the border within which, at the top, is a representation of a branch of a fig-tree bearing fruit and leaves, surrounded by the words "Fig Syrup Company" or "California Fig Syrup Company," and below which appear in larger letters the words "Syrup of Figs," and below these last named words appears a brief statement of the virtues of this prepara-

tion, together with the words "Manufactured only by the California Fig Syrup Company," and therefore, and on that ground these defendants leave the complainant to make such proof in that regard as it may deem proper.

And, further answering, these defendants say that they are not informed, save by said bill of complaint, whether the complainant and its predecessor in interest was the first to put up a liquid laxative preparation in oblong rectangular glass bottles having on them labels with the words "Syrup of Figs" and directions for use, all as shown by Exhibit "B," said bottles being put up in cartons or boxes like Exhibit "A," and therefore these defendants leave the complainant to make such proof in that regard as it may deem proper.

And, further answering, these defendants say that they do not know and they are not informed, save by said bill of complaint, whether the complainant and its predecessor in interest was the first person, firm or corporation to adopt the business name of "California Fig Syrup Company" or "Fig Syrup Company," or a business name of which the words "Fig Syrup Company" were a part, or whether the complainant is indifferently known by the trade and public as the "California Fig Syrup Company," the "Fig Syrup Company" and "Syrup of Figs Company" to such an extent that business letters to complainant ordering its said preparation or on any business said company were frequently addressed to it under any one of said names, and therefore these defendants leave complainant to make such proof in those matters as it may deem proper.



And, further answering, these defendants say that they do not know and are not informed, save by said bill of complaint whether the complainant has spent large sums of money or more than one million dollars in advertising its said preparation under the name "Syrup of Figs" or "Fig Syrup" throughout the United States and other countries, or has made the same and its merits known to the public to such an extent that it has become a household word, or that said preparation in consequence has become known as a liquid laxative medicine so as to be distinguished from all other medicines of the same general character under the name "Syrup of Figs," or that its merits and popularity have become so well established that many millions of bottles have been sold under the name of "Syrup of Figs," or "Fig Syrup," or that in the last twelve months before the filing of the bill of complaint more than two million bottles thereof had been sold, or that the good name of said preparation was gaining in popularity and in the confidence of the public to such an extent that the demand for the same is increasing each day, or that at the commencement of this suit or for years past this preparation of complainant has been one of the principal articles of sale and a part of the stock of almost every druggist in the United States, and therefore these defendants leave the complainant to make such proofs in those matters as it may deem proper.

Admit that amongst other ways of advertising the complainant has used the advertisement illustrated by Exhibit "C," Exhibit "C1" and Exhibit "C2," filed herein with the bill of complaint, but in that behalf aver that until within comparatively a short time before the filing of

the bill of complaint all of such advertisements then contained statements to the effect that the said preparation of the complainant was the "California Liquid Fruit Remedy" and contained the juice of the figs or was made from figs, whereas such said statements were false, fraudulent and deceptive, and complainant removed said statement from its said advertisement and advertised in the form of said exhibits merely for the purpose of laying a foundation on which to bring this suit, knowing full well that if they brought a suit while its advertisement contained such false, fraudulent and deceptive statements they could obtain no relief in this Court nor in any other Court of equity.

And, further answering, these defendants deny that the complainant has acquired the exclusive right to the name "Syrup of Figs" or the name "Fig Syrup" or to any colorable imitation of the same as applied to a liquid laxative medical preparation, irrespective of the form of bottle or package in which it may be sold to the public.

Deny that complainant has acquired the exclusive right to the words "Syrup of Figs" or "Fig Syrup" or any colorable imitation of the same as a part of the business name of a concern making a liquid laxative medical compound.

And, further answering, these defendants say that they do not know, and they are not informed, save by said bill of complaint, whether the complainant's good will in the manufacture of said preparation is of the value of one million dollars or any other sum, and therefore they leave the complainant to make such proofs in that regard as it may deem proper.

And these defendants deny that the defendant, Clinton

E. Worden & Co., desiring or intending to perpetrate a fraud on complainant's rights or to trade to its profit and advantage upon the reputation created by complainant's preparation, or desiring to impose a worthless production upon the public as and for complainant's preparation, or otherwise or at all has prepared and put up in packages resembling in form the complainant's preparation, or in palming off the same or causing the same to be palmed off upon the public as and for complainant's preparation or upon the valuable reputation which the complainant claims to have created for its said medical laxative preparation.

These defendants admit that Clinton E. Worden & Co. have prepared, put up, and sold a liquid laxative medicine under the name "Syrup of Figs," but deny that the same has been put up and sold in bottles, packages or cartons so closely in imitation of complainant's bottles and packages, Exhibits "A" and "B," as to be likely to deceive the ordinary purchaser in buying defendant's preparation for that of complainant, or to enable unscrupulous retail dealers to palm off defendant's preparation as the complainant's preparation.

Admit that the defendant, Clinton E. Worden & Co., has put up for sale and sold a compound claiming to be a liquid laxative medical preparation and enclosed it in bottles and packages very similar in size to those of complainant, and has marked the same with the words "Syrup of Figs" and has stated and declared on the outside carton or paper box containing said bottles, words importing that the same is prepared by a Fig Syrup Company; that on some bottles the words "The San Diego Fig

Syrup Company, San Francisco, Cal.," on others the words "Fig Syrup Company, San Francisco, Cal., on others the words "New York Fig Syrup Company, New York city, N. Y.," on others the words "Prepared by Yetiva Drug Company, Louisville, Kentucky," and on others the words "Laxative Fig Syrup Company, New York City, N. Y." have appeared. but in this behalf and in explanation thereof these defendants aver that the defendant, Clinton E. Worden & Co., is a wholesale manufacturing druggist, engaged in manufacturing medical compounds for other druggists and for retail druggists; that it has manufactured the medical compound called "Syrup of Figs" for other druggists and at their orders; that the name hereinabove referred to is placed upon the labels enclosing said bottles at the request and the order of the retail druggist who orders the same and not at the instigation of said Clinton E. Worden & Co., that the said druggists ordered the medicine from Clinton E. Worden & Co., and ordered and directed Clinton E. Worden & Co. to place said words upon said labels, and thereupon Clinton E. Worden & Co. manufactured said medicine and placed said words upon said label and delivered the same to the retail druggists ordering the same; that the said Clinton E. Worden & Co. does not know whether said names are fictitious or otherwise and whether or not there is no corporation, copartnership or firm excepting that of complainant doing business under the name of "Fig Syrup Company," and whether said statements upon said bottles were intended to deceive the public and induce them to believe that the compound prepared by Clinton E.

Worden & Co. is prepared by complainant these defendants have no knowledge, information or belief on the subject and therefore leave the complainant to make such proof in that behalf as it may deem proper.

And, further answering, these defendants say that they do not know, and they are not informed, save by said bill of complaint, whether customers are deceived by said statements or are induced to purchase said compound prepared by Clinton E. Worden & Co. in the belief that they are purchasing the liquid laxative medicine prepared and sold by complainant, and therefore they leave complainant to make such proof in that regard as it may deem proper.

Admit that the other defendants herein, except Clinton E. Worden & Co., are druggists doing business in the city and county of San Francisco, State of California, and aver that they have no connection with one another or with Clinton E. Worden & Co., but each of them has a separate and independent business of his own in which none of the others are interested, and they have separately and individually purchased from Clinton E. Worden & Co. the liquid laxative medicine made by Clinton E. Worden & Co., called "Syrup of Figs." and have sold the same, but deny that it was with the intent and purpose of deceiving their customers, or that they ever sold the said preparation as and for the medical preparation made and sold by complainant.

Further answering, these defendants say that they do not know and are not informed, save by said bill of complaint, whether the complainant's preparation has become so well known that when a person desires to purchase the



same the ordinary method is to go to the drugstore and call for "Syrup of Figs" or "Fig Syrup," and therefore and on that ground they leave the complainant to make such proof thereof as it may deem proper.

Further answering, these defendants deny that Clinton E. Worden & Co. have put up their bottles and packages in such close imitation of packages put up by complainant as to cause the retail purchasers of "Syrup of Figs" or "Fig Syrup," who call for the article of complainant's manufacture under said name, to at once conclude when he is handed a bottle of defendant's preparation, marked as aforesaid, that he has the article of complainant's manufacture which he has seen advertised.

Deny that the intent and the actual effect of any actions of the defendant is to perpetuate a fraud on complainant in its business in the manufacture of said liquid laxative preparation or upon the public by causing a confusion in the trade between complainant's medicine and that of defendant, or by causing defendant's preparation to be sold on the reputation of complainant's, or by putting it in the power of unscrupulous retail druggists to palm off upon the consumer the defendant's preparation as and for that of complainant.

These defendants deny that in order that any fraud may be more effectually carried out or for any improper motive, said Clinton E. Worden & Co. sells its preparation to retail druggists at a much lower price than that established by complainant for its preparation.

Defendants deny that they have deliberately or fraudulently or otherwise or at all conspired together to per-

actuate upon complainant the fraud charged in the complaint, or any fraud.

Deny that the complainant has been greatly or at all injured in its business in the manufacture of its medicine known as "Syrup of Figs," or that it has suffered injury or damage by reason of the acts of defendants to the extent of at least ten thousand dollars, or that it is a continuing wrong or one which, if permitted to continue, will work irreparable injury.

And, for a separate and further defense, these defendants aver, upon their information and belief, that the preparation made and sold by complainant under the name of "Syrup of Figs" does not and never did contain any syrup of figs or any fig syrup; or any juice of figs or any part or portion or quantity of figs in any form; and that the name "Syrup of Figs" and "Fig Syrup" and the name of the company, "The California Fig Syrup Company," and the form and appearance of the labels and the pictures on the labels, and the statements on the labels adopted and used by complainant in connection with its liquid laxative medicine were all designed, adopted and used with the deliberate intent and purpose to deceive the public and the user of the medicine and to perpetrate a fraud upon them by inducing them to believe that the preparation contained figs in some form, and that by reason thereof the said medicine derived its laxative properties and also a pleasant and agreeable taste; that the complainant has been successful in perpetrating the said fraud upon the public and for years last past has perpetrated said fraud by wholesale and have induced the public generally throughout the world to believe the state-

ments aforesaid concerning the said medicine and its connection with figs, and thereby complainant has made and realized large profits, gains and advantages from the sale of said medicine, all of which was caused and which accrued and were made by reason of said false, fraudulent and deceptive statements; that as a matter of fact the said so called "Syrup of Figs," sold by complainant consists of the ordinary and well known laxative called senna as a basis, together with certain aromatic carminatives added for the purpose of giving it a pleasant and agreeable taste as a cure to the naturally griping effect of senna when taken alone; that in order to sell such a compound complainant made the false, fraudulent, and fictitious statements hereinabove charged against it and was enabled to sell the same solely by virtue of said false, fraudulent and fictitious statements, and said complainant has built up its business and its trade upon the strength of and by virtue of the said false, fraudulent and fictitious statements, for which reason complainant is not entitled to relief in a Court of equity.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged; without this, that there is any other matter, cause or thing in the said bill of complaint contained (material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, canvassed, traversed and avoided or denied) is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct; and humbly pray to be hence



dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

PURCELL ROWE,  
Solicitor for defendants.

JOHN H. MILLER,  
Of counsel.

United States of America,  
Northern District of California,  
City and County of San Francisco. } ss.

W. W. Worden, being duly sworn, deposes and says that he is treasurer of Clinton E. Worden & Co., one of the defendants in the within entitled action; that he has read the above and foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

That this verification is made on behalf of all the defendants.

W. W. WORDEN,  
Treas. of Clinton E. Worden & Co.

Subscribed and sworn to before me this thirteenth day of April, 1898.

[Seal]

FRANK L. OWEN,

Notary public in and for the city and county of San Francisco, State of California.

[Endorsed]:

Service of the within answer admitted this fourteenth day of April, A. D. 1898.

OLNEY & OLNEY,  
Solicitors for complainant.

Filed April 14, 1898. Southard Hoffman, Clerk.

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*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

CALIFORNIA FIG SYRUP CO. (a Corporation),

Complainant,

vs.

CLINTON E. WORDEN & CO. (a Corporation), J. A. BRIGHT, T. F. BACON, E. LITTLE, C. J. SCHMELZ, and LUCIUS LITTLE,

Defendants.

### Replication.

Now comes the complainant in the above entitled action and for replication to the answer of Clinton E. Worden & Co., a corporation, and to the answer of J. A. Bright, T. F. Bacon, E. Little, C. J. Schmelz and Lucius Little, alleges as follows:

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insuffi-

iciencies of each of the said answers, for replication thereunto, and to each of said answers, saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that each of the said answers of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable Court shall direct; and humbly prays, as in and by its said bill hath already prayed.

OLNEY & OLNEY,  
Solicitors for complainant.

[Endorsed]:

Service of the within is hereby admitted this second day of May, 1898.

PURCELL ROWE,  
Solicitor for defendants.

Filed May 2, 1898. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, for the Ninth Judicial Circuit, in and for the Northern District of California.*

**In EQUITY.**

CALIFORNIA FIG SYRUP CO.,	}	No. 12,378.
Complainants,		
vs.		
CLINTON E. WORDEN & CO. et al.,	}	
Respondents.		

**Testimony Before Examiner.**

Be it remembered, that, on the eleventh day of October, A. D. 1898, and on the several days thereafter to which the examination was regularly adjourned, as hereinafter set forth, at my office, room 87, in the United States Appraisers' building, on the southeast corner of Jackson and Sansome streets, in the city and county of San Francisco, State of California, before me, E. H. Heacock, Examiner in Chancery, of the Circuit Court of the United States for the Ninth Circuit and Northern District of California, personally appeared the several witnesses whose names are hereinafter set forth, who were produced and examined on behalf of the respective parties to the above-entitled cause.

Warren Olney, Esq., appeared as counsel on behalf of complainant, and  
 John H. Miller, Esq., as counsel on behalf of respondents.

Following is a record of the proceedings:

(It is stipulated that the depositions of the several witnesses may be taken down stenographically by B. C. Brown, a skillful stenographer, and by him put into type-writing.)

Examination-in-Chief of

RICHARD E. QUEEN, a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your full name?

A. Richard E. Queen.

Q. 2. What is your age and place of residence?

A. My age is forty-five on my next birthday; my residence is 2212 Sacramento street, San Francisco.

Q. 3. What position, if any, do you occupy in connection with the complainants in this case?

A. I am the general manager of the California Fig Syrup Co., the complainant in this case.

Q. 4. How long have you been such general manager?

A. Since the fall of 1883.

Q. 5. What was your position prior to the year 1879?

A. I was in the drug business.

Q. 6. Where?

A. At Reno, Nevada, from the fall of 1876 to the year 1879.

Q. 7. Up to what time?

A. Up to the year 1883, the fall of 1883.

Q. 8. Did you receive an education as a druggist, a professional education?      A. Yes, sir.

Q. 9. Where?

A. In Kentucky. I would explain in this connection that I had about three years' practical training in some of the leading drugstores in the State, and then I went to college for two or three terms, where I took special lessons in chemistry, from a professor in chemistry, and in the year 1874 I passed an examination before the State Board of Pharmacy at Louisville, Kentucky, which authorized me to practice pharmacy in that State.

Q. 10. When did you first commence to work as a practical druggist and pharmacist? A. As a clerk?

Q. 11. Yes, when you first commenced to work at the position? A. In 1869 or in 1870.

Q. 12. And you worked at that business in Louisville, Kentucky, up to what time?

A. I started at Owensboro, Kentucky, afterward I spent about a year at Henderson, Kentucky, and then went to Louisville in 1874 and took charge of a drugstore there as chief clerk and continued there until the fall of 1876.

Q. 13. Did you or not, during this time, give any attention to the compounding of preparations of food or medicine or both?

A. Yes, I paid special attention and devoted a good deal of my time to making original compounds and investigations in that line.

Q. 14. Now, coming down to Reno, Nevada. After you got in business there, did you pay any attention to the preparation of a compound to be used as a laxative? If so, state what you did.

A. After moving to Reno, Nevada, I was employed as manager of a drugstore there until the end of the year

1877, when I went into a drug business of my own, and during the year 1878, I made many experiments, with the idea of producing a pleasant, effective, liquid laxative, having observed that many people dislike to take pills, oils and other disagreeable medicines; and, after many experiments and study of laxatives in general, came to the conclusion that senna was the best general laxative known, but that the preparations then on the market were either weak in effect or griping in their nature; and I thought that if I could make a liquid preparation of senna which would be really pleasant to the taste and free from griping qualities, that it would answer the purpose. And at that time I also thought that certain other medicinal agents should be combined with the senna, and some of those medicinal agents were not very pleasant to the taste. And I thought of figs as a fruit that would afford me a considerable quantity of sugar and mucilaginous substance to counteract the unpleasant taste of the medicinal agents. And I used figs freely in my experiments for that purpose. As I progressed with my experiments I found or determined as a result of my experiments and studies that a uniformity and stability of product were of great importance, and that the fig substance was not conducive to those qualities, and that it had a strong tendency to ferment, and, therefore, that it would be better to use a small quantity. I also found that those medicinal agents which were unpleasant to the taste were better adapted to special cases than to general use, and concluded to omit them, and therefore did not need as large a quantity of fig substance as formerly. As finally prepared I had a new and original compound,



of which the fig syrup formed a very small but pleasant part, although not an essential part of the combination; that is, I might have used an equal quantity of honey or some other substance, instead of the fig substance, without changing the character and effect of the combination. While making my experiments I thought of what name I would give the preparation when completed. And as I was using figs I thought of the name "Syrup of Figs," which I then believed, and which subsequent investigation has confirmed, to be a new and original name, applied the first time to a laxative medicine. I consulted the textbooks and price lists—

Mr. OLNEY (to Mr. Miller).—There is no objection to the witness going on and answering my question without my asking other questions?

Mr. MILLER.—I have not interposed any objection yet.

Mr. OLNEY.—Very well, as long as there is no objection, go right ahead and tell your story.

The WITNESS (Continuing).—to see if the name had been used before. I could not find that it had ever been used. I desired to give a name which would be new and original, to distinguish my product from all other laxative medicines, and which would be pleasantly suggestive, and, after thinking over a number of names, I decided to use the name "Syrup of Figs." I knew that I was not using the name generically, because figs did not give character and effect to the combination. After having the preparation ready for sale I visited the physicians of Reno whom I knew, and stated to them the active ingredients of the preparation, and that figs were used in small quantities merely to give a pleasant taste, but



that I had given it in a fanciful way the name "Syrup of Figs." And those physicians recommended and prescribed the remedy and sent customers to me to purchase the same; and I made similar statements to those with whom I came in contact.

Q. 15. How long did you manufacture and sell this product on your own account?

A. For some months afterward. That is, I continued in the business there, selling it as a retail druggist, until 1883, but the California Fig Syrup Co., the complainant, was organized on December 6, 1881, and I then sold and conveyed all my right, title and interest in the business, trademarks, names, wrappers and labels and goodwill of the business of manufacturing and selling this medicine, to the complainant.

Q. 16. Were you active in bringing about the formation of the complainant company? A. Yes, sir.

Mr. OLNEY.—I offer in evidence a certified copy of the articles of incorporation of the California Fig Syrup Co., certified to by the County Clerk of Washoe county, Nevada, and by the presiding judge of the judicial District of Nevada, which includes Washoe county, and the attestation by said judge and by the clerk of the Court in which it was formed.

(Marked "Complainant's Exhibit J.")

(It is stipulated between the respective counsel that the document, Complainant's Exhibit "J," may be withdrawn from the files upon substitution of a correct copy thereof approved by the Examiner.)

Q. 17. What did the complainant do after its organization in the way of manufacturing this medicine?

A. The complainant continued manufacturing in a small way at Reno, Nevada, until the fall of 1883, when I was elected general manager of the company and came to San Francisco in pursuance of the original intention of opening a manufactory in this city.

Q. 18. It did enter upon the business then in the State of Nevada manufacturing this product?

A. Yes, sir.

Q. 19. Where is the principal place of business of this corporation? A. At Reno, Nevada.

Q. 20. It is organized under the laws of the State of Nevada? A. It is.

Q. 21. If it has any branches, state where.

A. It has commercial offices in this city, Louisville, Kentucky, New York, London, and Montreal, Canada.

Q. 22. Then do I understand you that the place of business of the corporation is Reno, Nevada, but it has commercial offices in this city and in other cities?

A. Yes, sir.

Q. 23. How long did it keep up the manufacture of this product?

A. It has continued to manufacture it down to the present time.

Q. 24. Where does it manufacture this product? Mention some places where it is manufactured?

A. It is manufactured in this city, San Francisco, California, and at Louisville, Kentucky.

Q. 25. Do you know the methods by which the complainant manufactures its product? A. I do.

Q. 26. Have you kept charge of that matter and kept yourself informed in regard to it at all times?

A. Yes, in a general way.

Q. 27. Is there anybody besides yourself who has had the active management of this corporation so far as manufacturing this medicine is concerned?

A. There are trusted employés who have been allowed to do the manufacturing.

Q. 28. But the general management, has any one had charge of that except yourself?

A. Not since 1883.

Q. 29. To what extent do figs enter into the composition of this medicine as prepared by complainant?

A. We use about ten pounds of figs to each one hundred gallons of medicine. That is, we use the soluble substance of about ten pounds of figs, which amounts to a little less than one per cent of the medicine.

Q. 30. What efforts did you first, and the complainant after you, make for the purpose of bringing the medicine to the attention of physicians and the public? State fully.

A. After starting a manufactory in this city, and for a year or so prior to that time, some reading notices were inserted in the newspapers of the Pacific Coast, and, in 1885, I went to Louisville, Kentucky, and established a branch office and manufactory there. Our capital at that time was limited, and we were obliged to build up the business gradually and slowly, and in 1886 and 1887, while the business was still, comparatively speaking, in its infancy, we decided to advertise more largely; and in the year 1887 we commenced to place advertisements in medical journals, stating, for the information of physicians, the composition and active ingredients of the preparation;

and in that same year I commenced, acting as manager of complainant, to have the representatives of the California Fig Syrup Co. visit physicians at medical conventions and in their offices, with instructions to give samples of the remedy to physicians to request them to try it in their practice, and to state to them the active ingredients of the preparation, that a small quantity of figs were used simply to promote a pleasant taste, and to give them such other information as they might desire in regard to the manufacture and sale of the article.

Q. 31. In that connection did you or did you not make any special effort to attract the notice of physicians to the article and get them to recommend it to their patients?

A. We did make a special effort, believing that it would be greatly to our advantage to secure the approval and recommendation of physicians. We have continuously, down to the present time, advertised the facts in leading medical journals very extensively and continuously and spending many thousands of dollars to inform physicians that the active principles, the active laxative parts of the preparation are obtained from senna, combined with aromatic carminatives, and that other substances are used, such as sugar, water and a small quantity of juice of figs.

Q. 32. What was the result of your efforts in calling the attention of physicians to this medicine?

A. It resulted in a very large recognition and acceptance, on the part of the medical profession, of complainant's preparation, as an excellent laxative remedy, and

in their recommending and prescribing the same, and a large increase in our sales.

Q. 33. Have you in Court any samples of the advertisements that you made use of in medical journals calling the attention of physicians to the character of the medicine?       A. I have.

Q. 34. Did you advertise in any other journals except strictly medical journals, the qualities of your medicine and the purpose for which it was adapted, outside and independent of newspapers of general circulation?

A. I did.

Q. 35. What was the character of those journals?

A. Certain monthly publications with which I placed advertisements on the advice of a physician, stating that he thought it advisable to give information to the readers of those publications that he regarded them as people who would appreciate a statement as to the excellence of our laxative remedy and as to its composition.

Q. 36. I show you a journal entitled "Annals of Hygiene, a Journal of Health," dated December, 1893, and being the issue of that date of that journal. State if that page which I show you contains one of the advertisements inserted by the complainant company, or which it caused to be inserted?       A. It does.

Mr. OLNEY.—I offer in evidence the advertisement contained on page 10 of the advertising supplement. I will offer that page as an exhibit, Complainant's Exhibit "K," and ask the reporter to copy it into the record, and I hereby offer at any time when this case is on argument, or at any time when counsel may desire, that the book

which contains the exhibit shall be subject to his order and disposition.

Mr. MILLER.—If the page is to be offered I object to the book being taken away, because I want the whole book here. I can't get any idea just from a page alone, and there are other parts of the book that I want to see.

Mr. OLNEY.—If it is simply the book that you want to see, I can let you have the book at your office and take your receipt for it.

Mr. MILLER.—I don't think the Examiner would allow that.

Mr. OLNEY.—Then I offer the page in evidence.

Mr. MILLER.—We object to the page being taken out of the book and being offered in this way in evidence, because the page alone does not show the character of the book nor the other parts of the book, which I desire to see.

Mr. OLNEY.—Then I will offer the whole book in evidence.

(Marked "Complainant's Exhibit K.")

Mr. OLNEY.—I offer in evidence the February number for the year 1893, of the magazine or journal called "Food," and purporting to be a journal of hygiene and nutrition, the half-page advertisement of the complainant on page 8 of the advertisements in said journal, an advertisement that is worded like the advertisement, Exhibit "K," and I ask that this be marked "Complainant's Exhibit L."

(Marked "Complainant's Exhibit L.")

Q. 37. And I will ask you if the complainant caused that advertisement to be inserted in that journal?



A. I did.

Q. 38. I show you the number dated February, 1894, of the "Dietetic and Hygienic Gazette," a monthly journal of physiological medicine, and call your attention to page 2 of the advertisements, and ask you if the complainant caused that advertisement to be inserted in that journal?

A. I did.

Q. 39. (By Mr. MILLER.)—Where is that published?

A. New York.

Q. 40. By whom?

A. There is the name, Gazette Publishing Co., 1218 Broadway.

Mr. OLNEY.—We offer that in evidence, and ask that it be marked "Complainant's Exhibit M."

(Marked "Complainant's Exhibit M.")

Q. 41. I show you a journal or magazine entitled "Humanity and Health"; the number is that of December, 1894. I call your attention to the advertisement on the next to the last sheet in that journal, and ask you if the complainant caused that advertisement to be inserted?

A. It did.

Mr. OLNEY.—We offer that in evidence.

(Marked "Complainant's Exhibit N.")

Q. 42. I show you a periodical entitled, "The American Journal of the Medical Sciences, published in Philadelphia by Lea Bros. & Co., edited by Edward P. Davis, A. M., M. D., with the co-operation in London of Hector McKenzie, A. M., M. D., F. R. C. P., and I call your attention to the advertisement on page 12 of the advertising supplement of the magazine, and ask you if the complainant caused that advertisement to be inserted?



A. It did.

Mr. OLNEY.—I offer that in evidence and ask that it be marked "Complainant's Exhibit O.")

(Marked "Complainant's Exhibit O.")

Q. 43. I show you a journal entitled "The Trained Nurse and Hospital Review," for December, 1894, and call your attention to a full-page advertisement in the back part of that journal purporting to be by the California Fig Syrup Co., and ask you if the complainant caused that advertisement to be inserted? A. It did.

Mr. OLNEY.—I offer that in evidence and ask that it be marked "Complainant's Exhibit P.")

(Marked "Complainant's Exhibit P.")

Q. 44. I show you a journal entitled "The American Analyst, a popular analyst for the family and consumer, of everything relating to man's physical need and comfort," dated December, 1893; and I call your attention to the second page and fronting the first page of reading matter, to an advertisement purporting to be by the complainant, and ask you if the complainant caused that advertisement to be inserted? A. I did.

Mr. OLNEY.—I offer that in evidence and ask that it be marked "Complainant's Exhibit Q.")

(Marked "Complainant's Exhibit Q.")

Q. 45. I show you a journal entitled "Jeness Miller Monthly, conducted by Mrs. Jeness Miller"; the date is March, 1895; and I call your attention to the advertisement on page 42, purporting to be by the complainant company, and ask you if the complainant caused that advertisement to be inserted? A. It did.

Mr. OLNEY.—I offer that in evidence and ask that it be marked “Complainant’s Exhibit R.”

(Marked “Complainant’s Exhibit R.”)

Q. 46. Mr. Queen, are you acquainted with a medical work entitled “Diseases of the Rectum,” by Joseph M. Matthews, M. D., Professor of Principles and Practice of Surgery and Clinical Diseases of the Rectum, Kentucky School of Medicine, President of Louisville Clinical Society, and apparently a member of many other societies. Are you acquainted with this work?           A. I am.

Q. 47. I call your attention to the following language used on page 279: “However, there are cases which, perforce of circumstances, cannot be operated on. In such we have to pursue the following plan: first, have the patient clear the intestinal tract by taking a good aperient. He should then be provided with a mild laxative to keep on hand in order to keep the bowels slightly soluble. The preparation known as ‘Syrup of Figs’ answers very nicely for this purpose. Its purgative action is obtained from the use of senna. Children especially can take this medicine easily.” Do you know whether or not Dr. Matthews referred to complainant’s preparation when he spoke of this term—when he used the term “Syrup of Figs”?

Mr. MILLER.—We object to that as incompetent, irrelevant and immaterial, and an effort to interject into the case the mere statements of some third person not under oath, and therefore it is not competent evidence.

Mr. OLNEY.—Counsel for complainant states that he proposes before the case closes to prove that Dr. Matthews and his book, from which I have just read, is re-

garded by physicians as a competent authority upon the question of diseases of the rectum and of medicine used in those diseases.

Mr. MILLER.—Counsel well knows that such would not counteract the objection which has been made, and make competent evidence that which, according to the fundamental rules of evidence, is not competent, to wit, the unsworn statements of a third person. And I want to add the further objection, that it is utterly impossible for this man, the witness on the stand, or for anybody else, to know what another man meant in the way indicated by the question.

A. I know that he referred to complainant's preparation.

Q. 48. Now, after you had called the attention of physicians to the merits of this composition or medicine, did the complainant company do anything to call the attention of the public generally to it? And if so, what was done?

A. Some statements were published in certain monthly publications, beginning with the year 1888 down to the year 1893, stating the composition of the remedy, and calling attention to its merits, but we did not begin to publish in newspapers generally the statement that the active laxative medicinal principles were obtained from senna and combined with aromatic carminatives until the year 1893. Since that time we have published very extensively throughout the United States in the leading newspapers and in many thousands of newspapers similar statements; and with the beginning of the year 1894, we commenced to have small pamphlets or folders dis-

tributed from house to house throughout the United States, Canada and Great Britain, containing the same or similar statements; and the complainant had more than fifteen million or twenty million of these folders so distributed by a large number of traveling men and other employés, and has spent a great many thousands of dollars in publishing the facts as to the composition of the remedy to the public generally throughout the United States since 1893, in addition to the general statements which we have published from the beginning of the business down to the present time as to the merits of the remedy.

Q. 49. Have you a sample of those folders that you began to circulate in 1893 and 1894? (The witness produces.) I show you a folder purporting to be issued by the complainant company, and ask you if that is one of the folders circulated as stated in your last answer?

A. This is one of the folders which we commenced to put out in the early part of the year 1894, and to distribute throughout the United States.

Mr. OLNEY.—We offer this in evidence, and ask that it be marked “Complainant’s Exhibit S.”)

(Marked “Complainant’s Exhibit S.”)

Q. 50. I show you Exhibit “C<sup>2</sup>,” attached to the bill of complaint, and ask you to state what it is, and whether or not that is a folder that has been extensively circulated by complainant, and, if so, to what extent?

A. It is. We have had millions of them distributed.

Q. 51. Anywhere else except in California?

A. All over the United States and Great Britain.

Q. 52. Canada?

A. We have distributed in Canada. I am not sure whether this same folder has been used in Canada. We have distributed in Canada similar folders.

Q. 53. I show you Exhibit "C<sup>1</sup>," attached to the bill of complaint, and I ask you what it is?

A. It is one of complainant's half-page advertisements.

Q. 54. Did the complainant cause that to be inserted in newspapers throughout the country?

A. Yes, the complainant had this advertisement inserted in many leading newspapers in the United States.

Q. 55. In any other country except this country?

A. Not the same advertisement, I think.

Q. 56. Is that a sample or type of the advertisements that the complainant caused to be inserted in the newspapers of the country?      A. Yes, sir.

Q. 57. I show you Exhibit "C<sup>3</sup>," attached to the bill of complaint, and ask you if this is a folder or circular issued and circulated by the complainant company?

A. It is.

Q. 58. To what extent has that circular or folder been circulated throughout the United States?

A. Several millions of copies.

Q. 59. Can you state in round numbers the amount of money expended by complainant in advertising its medicines?

A. It has expended more than one million dollars prior to the beginning of this suit.

Q. 60. What has been the extent of the sales of com-

plainant company of this medicine known as "Fig Syrup"?

A. About two million bottles annually for some years past.

Q. 61. By what name has that medicine been known in the drug trade?

A. Known indifferently by the name "Syrup of Figs" or "Fig Syrup." It is called for in ordering, under either name.

Q. 62. Did you take pains to ascertain before you gave that name to your medicine, whether or not the name has ever been used before? A. I did.

Q. 63. What did you find out about it?

A. So far as my investigation enabled me to know, I found that it had never been used before.

Q. 64. Do you know whether there has been at any time upon the market in this country any product by the name of "Syrup of Figs" or "Fig Syrup," other than that of complainant's production?

A. My knowledge and investigations throughout the United States have convinced me that there was no other article manufactured or sold under the name of "Syrup of Figs" or "Fig Syrup" until some years after the complainant's preparation was well known and generally advertised throughout the United States; but since that time imitations have appeared upon the market under similar names.

Q. 65. Have there been any products upon the market at any time to your knowledge called "Syrup of Figs" or "Fig Syrup" except the complainant's preparation and imitations thereof?



A. To the best of my knowledge there never has been.

Q. 66. What means have you of knowing whether or not any such article has been made or sold, or whether any article has been made or sold, under the name of "Syrup of Figs," except your production?

A. I have consulted with physicians and druggists throughout the United States, and made special inquiries, and also examined the textbooks recognized by druggists as standard works on pharmaceutical preparations; also the price lists of various establishments.

Q. 67. Has the complainant company any agents or means by which it can ascertain whether or not there is any article upon the market of the name of "Syrup of Figs" ?

A. We have our agents and travelers scattered throughout the United States with instructions to keep us informed on the subject.

Q. 68. Have you, by any of the means used by complainant, ascertained that any article named "Syrup of Figs" has ever been made or sold in the United States except the complainant's production or imitations thereof?

A. I have known as the result of the statements of our agents and representatives that no such product exists.

Mr. MILLER.—I move to strike out the answer, on the ground that it is purely hearsay.

Q. 69. (By Mr. OLNEY.)—By what term is the complainant's preparation designated in the trade when an order is given at any time?

A. By the name "Syrup of Figs" or "Fig Syrup."

Q. 70. I show you Exhibit "A," attached to the bill of



complaint, and being a carton or box in which the medicine is enclosed. I will ask you if that truly represents the box or carton in which the complainant's preparation is enclosed?      A. It does.

Q. 71. Is that a sample of the box?

A. It is a sample of the box in which all bottles of complainant's preparations are enclosed and sold to the trade.

Q. 72. I show you Exhibit "B," attached to the bill of complaint. Is that a bottle in which complainant puts up its preparation?

A. This is the bottle which is uniformly used in putting up complainant's preparation, and the label which appears uniformly on the bottle.

Q. 73. I show you Exhibit "D," attached to the bill of complaint, marked on the outside "Hayes street Pharmacy, May 10, 1897. R. E. Q." Did you ever see that before?      A. I have.

Q. 74. Where?

A. At the drugstore of J. A. Bright at the northwest corner of Hayes and Laguna streets, in this city.

Q. 75. State the circumstances under which you saw and how you got it, if you did get it, and all about it.

A. On or about May 10, 1897, I went into the drugstore of J. A. Bright, corner of Hayes street and Laguna, and asked for a bottle of "Syrup of Figs." The young man behind the counter, apparently in charge of the store, asked me if I would have a twenty-five cent or thirty-five cent bottle.

Mr. MILLER.—We object to any conversation between this witness and the young man apparently in charge of

the store, referred to by him, on the ground that it is entirely hearsay, and was made not in the presence of the defendants or any of them, and therefore it is utterly incompetent.

Q. 76. (By Mr. OLNEY.)—Go ahead with the conversation.

Mr. MILLER.—And I notify counsel now that I shall move the Court to strike out the testimony at the proper time.

A. I asked him to show me the bottles. He went to the shelf where this bottle and some others like it were standing and picked up the package. I said to him: "What is the difference between the two" ? And he replied that it was made by different companies. I then asked who made this package which he handed me. He replied, "The San Diego Fig Syrup Co." I said: "All right, I will take that bottle." He then went and wrapped it up and I paid him for it, twenty-five cents. He handed it to me, and I said: "Is it not a fact that this was made by Clinton E. Worden & Co." ? And he said: "Yes." I then said: "I shall have to bring suit against you for selling the same." And he said that the proprietor was not in then, and asked me to call and see the proprietor. I went back a day or two later and met a man who said that he was the proprietor of the store, and I told him that he was infringing on our legal right, and that unless he would agree to discontinue, I should have to bring suit against him. He then said to me that he had been induced by the representative of Worden & Co. to sell the article, although he did not at first wish to do so, but that Worden & Co.'s representative had stated to

him that he had a right to sell this imitation because we lost a suit in the East on account of having no figs in our preparation. I said to him again that I would have to bring a suit unless he would promise to discontinue. And he replied: "I don't wish to go into Court, but if called upon or subpoenaed I will go before the Court and state the truth in the matter." However, he did not promise me that he would discontinue the sale of the article; at least, I didn't so understand him. And I therefore reported the case to our attorney, and requested that suit be brought against him, which was done.

Mr. MILLER.—Do you contend that this conversation is competent evidence?

Mr. OLNEY.—Undoubtedly.

Mr. MILLER.—I move to strike out the entire answer of the witness on the ground that it is purely and palpably hearsay testimony, not binding upon defendants or any of them in this suit, and therefore not competent evidence; and I notify counsel now that I shall apply to the Court to have the deposition suppressed on that ground.

Q. 78. (Mr. OLNEY.)—I show you Exhibit "E," attached to the bill of complaint, and endorsed on the back of it "Fairmount Pharmacy, May 7, 1897, R. E. Queen," and I ask you if you ever saw that before, and if that endorsement is in your handwriting?

A. I have seen this package before, and the endorsement is in my handwriting.

Q. 79. State the circumstances under which you saw it and how you obtained it and how you came to make that endorsement.

A. On or about May 7, 1897, I went to the Fairmount

Pharmacy in this city and asked for a bottle of "Syrup of Figs." The man behind the counter, apparently in charge of the store, went to his show-window and picked out a package—

Q. 80. (Interrupting.) Wait a moment. Do you know who was the proprietor of that Fairmount Pharmacy?

A. He stated to me that he was the proprietor and that his name was C. J. Schmelz.

Mr. MILLER.—I move to strike out the answer on the ground that it is purely hearsay testimony, not made in the presence of these defendants or any of them, and therefore incompetent.

Q. 81. (By Mr. OLNEY.)—Go ahead.

A. After taking up the package he turned to where I was standing, behind his counter, and said to me, "We have the Fig Syrup Co.'s." I said: "All right! give me a bottle." He wrapped it up and I paid him twenty-five cents for the same.

Q. 82. Is that the bottle?

A. That is the bottle. I then stepped aside while he waited upon a customer, another customer who had approached the counter at that time, and when he had finished waiting upon the customer, I said to him: "Will you tell me who made this preparation?" He replied: "Worden." I then asked: "Clinton E. Worden & Co.?" He said: "Yes." I said: "I am the manager of the California Fig Syrup Co. You are deceiving our customers, infringing upon our legal rights, and, unless you agree to discontinue, I shall have to bring suit against you." He then said: "I know it is not right to do so, but owing to the cutting of the prices of proprietary medicines in this

city, a druggist has to resort to something of the kind in order to make a living." I then said: "Will you agree to discontinue if I do not bring suit at all against you?" And he replied: "I have not money to spend in fighting lawsuits, and I wish you would call again before taking any action in the matter." I said to him: "Well, you have only to state whether or not you will discontinue the sale of the article." And he replied: "I wish to see Mr. Worden first. Will you not call again?" I said: "Yes, I will call again." And I did call at this store twice after that and was told each time that he was out. I then informed our attorney and instructed him to bring suit.

Mr. OLNEY.—That is not relevant. Strike that out.

Mr. MILLER.—It is just as much evidence as the other.

Q. 83. (By Mr. OLNEY.)—I show you Exhibit "G," attached to the bill of complaint, and endorsed on it, "Ariel Pharmacy, May 11, 1897, R. E. Q.," and ask you if you have ever seen that before, and whether that endorsement is in your handwriting?

A. I have seen this package before, and it is in my handwriting.

Q. 84. Will you state the circumstances under which you saw it and how you obtained it?

A. I bought it on about May 11, 1897, at a drugstore on Hayes street, the Ariel Pharmacy. I went in and asked for a bottle of "Syrup of Figs," and the man behind the counter, apparently in charge of the store, asked me if I would have a small or a large bottle. I replied, a small bottle, and he handed me this package, and I paid him twenty-five cents for the same and left the store. I

went a day or two later to see him again. I told him that I was the manager of the California Fig Syrup Co., and would bring suit against him unless he discontinued selling the imitation of that preparation, which he had sold me a day or two previously. He replied that I could do as I liked about the matter; that he had an understanding or agreement with Mr. Worden, who manufactured the article, and that Mr. Worden would protect him.

Q. 85. Did he say who he was?

Mr. MILLER.—I move to strike out the answer of the witness just given on the ground that it is hearsay, utterly incompetent, irrelevant and immaterial as to Worden or any of the defendants, and not made in their presence.

A. He stated that he was T. F. Bacon, the proprietor of the store.

Mr. MILLER.—I move to strike out the answer to the last question on the same ground, to wit, that it is hearsay, and therefore incompetent, irrelevant and immaterial.

Q. 86. (By Mr. OLNEY.)—Do you know whether or not any person or corporation, prior to the time you put upon the market the preparation known as "Fig Syrup" or "Syrup of Figs," packed or dressed medicine in the form of Exhibits "A," and "B," which you have already testified to. The question is, if you know.

A. I had considerable experience in the drug business, and made examination of a great many drugstores and inquiries of a great many druggists and the trade generally.



Q. 87. And from those inquiries what would you state?

A. That no such—

Mr. MILLER (Interrupting).—We object to the question as incompetent, irrelevant and immaterial, and calling for hearsay testimony, and the statements of third parties not parties to this action, and not made in the presence of any of the defendants.

A. (Continuing.)—Based upon my experience and investigation, I would state that no preparation was ever put up in a package like the complainant's preparation, and marked with the name of "Syrup of Figs" or "Fig Syrup" before complainant's preparation was placed upon the market.

Q. 88. (By Mr. OLNEY.)—Do you know whether there has ever been a corporation of the name of California Fig Syrup Co., or a similar name, in California, or anywhere else in the country?

(Objected to as incompetent, irrelevant and immaterial, because the suit is not based upon any infringement of corporate name.)

A. To the best of my knowledge, no such corporation existed prior to the existence of complainant in this case.

Q. 89. Did you do or has the complainant done anything in regard to registering the name "Syrup of Figs" in the United States Patent Office?

(Objected to as incompetent, irrelevant and immaterial, because the suit is based upon the common-law right, and not upon any right conferred by any laws of the United States, or dependent upon any registration of any trademark under the laws of the United States; and I want to



add the further objection that the certificate of registration is the best evidence of the fact.)

A. It was registered in the United States Patent Office about the year 1885.

Q. 90. Have you the certificate of registration?

A. I think not. Not to the best of my knowledge. It was filed in some case by my attorney or one of our attorneys, and it is not in my possession.

Q. 91. To what extent do the drugstores generally throughout the country carry the complainant's production?

(Objected to as incompetent, irrelevant and immaterial, because it is plainly and palpably a fact that the witness could not personally know without having visited each and every drugstore in the United States, and seen the extent of their trade in the article in question. Such knowledge as he may have, if any, is hearsay and, therefore, incompetent.)

Q. 92. (By Mr. OLNEY.)—Question continued, and state the source of that information.

A. I have visited many drugstores in the large cities of all sections of the United States, and in a great many of the small cities and towns. I have personally examined their stocks, and found that they had "Syrup of Figs" for sale made by complainant. I have also received orders from all sections of the United States, many thousands of them, from the principal drugstores in the leading towns of the United States, and from all sections of the United States, and I have sent agents of the company to all sections of the United States to examine and report and make sales, and from my own personal investi-

gations and knowledge of the facts and of the orders received, and the extent of the sales and the reports of the agents of the company complainant, I know that "Syrup of Figs" is for sale by nearly all the druggists in the United States.

Mr. MILLER.—I move to strike out the answer on the ground that it is based on hearsay testimony, and, therefore, incompetent.

Q. 93. (By Mr. OLNEY.)—Do you know of any article of trade or commerce made from figs and in the nature of a syrup of figs?      A. I do not.

Q. 94. Have you ever heard of any such product?

A. I have not.

Q. 95. If a preparation was made from figs, in the nature of a syrup, would it be of any value?

(Objected to as incompetent, irrelevant and immaterial.)

A. Not as a laxative medicine, and probably would have no commercial value, owing to the properties of the fig substance.

Q. 96. What is the value of the good-will of complainant's business, in round numbers?

(Objected to as incompetent, irrelevant and immaterial, first because it is utterly impossible for the witness to fix the value of it, other than by guessing at it, which would be improper; and in the second place this is not a suit to enjoin and prevent defendants from using the so-called trademark of "Fig Syrup" or "Syrup of Figs," and, therefore, the question of the value of complainant's good-will is incompetent, irrelevant and immaterial.)

A. Based upon the earnings of the company, which have amounted to a little more than five per cent of one million dollars, for some years past. I would state that the good-will of the business is of a value of not less than one million dollars.

Q. 97. (By Mr. OLNEY.)—Do you know of your knowledge whether or not Clinton E. Worden & Co., one of the defendants herein, have tried to induce retail druggists to purchase the imitation made, the article made by Clinton E. Worden & Co., and which is claimed to be an imitation of complainant's article, and offered it at a lower price than the complainant's article.

Mr. MILLER.—We object to that as incompetent, irrelevant and immaterial, because the suit is based upon an alleged infringement of trademark or trade name, and not upon any other acts or doings on behalf of defendant.

A. I don't know that of my own knowledge.

Q. 98. (By Mr. OLNEY.)—I show you Exhibit "F," attached to the bill of complaint here, and ask you if you have ever seen that exhibit, and if so, state the circumstances under which you saw it, and how you came to be in possession of it.

A. I have seen this exhibit before, on or about the tenth day of May, 1897. I went to the drugstore at the southeast corner of Kearny and Sacramento streets, in this city, where the sign "Lucius Little, Proprietor," then appeared upon the show-window of the drugstore. I went into the drugstore and asked for a bottle of "Syrup of Figs." The druggist took down a bottle from his shelf, wrapped it up and handed it to me, and I asked him the

question, "Who made this preparation?" He answered, "The California Fig Syrup Co.," and then he added in a somewhat indistinct voice, "Out on Haight street," or "Hayes street." I understood him to say "Haight street," but I may have misunderstood him. I picked up the package, and laying down the money, I said to him. "This was made by the California Fig Syrup Co., was it?" And he replied, "Yes." I then took the package and left the store.

Mr. MILLER.—We move to strike out the answer of the witness, first, on the ground that it is hearsay testimony, of what purports to be a conversation between him and another person, not in the presence of the other defendants, and therefore not binding in any way upon them, and, therefore, it is incompetent, irrelevant and immaterial, and at the proper time we shall move to suppress it.

Q. 99. (By Mr. OLNEY.)—What part of the city does complainant conduct its manufactory in?

A. On Hayes street.

(Further hearing adjourned to Wednesday, October 12, 1898, at 10 A. M.)

#### Examination-in-chief of

R. E. QUEEN, resumed.

(Note by stenographer—This testimony was taken at the forenoon session of October 13, but by request of the respective counsel is transcribed into the record at this point.)

(By Mr. OLNEY.)

Q. 100. Mr. Queen, I show you a newspaper cutting entitled "A Family Laxative," and ask you whether or not a notice similar to that was published in the newspapers of the United States, and if so, to what extent, and at what time?

A. This is an advertisement of a reading notice which the complainant had inserted in the newspapers generally throughout the United States, beginning in December, 1893, and throughout 1894. The complainant has it inserted in several thousand newspapers.

Mr. OLNEY.—I offer it in evidence and ask that it be marked "Complainant's Exhibit T."

(Marked "Complainant's Exhibit T.")

Q. 101. Mr. Queen, how is the complainant company addressed in its communications by the public generally?

(Objected to as incompetent, irrelevant and immaterial, because the suit is not for an infringement of complainant's name; and even if it were it is not charged that the defendants infringed the name; but the suit is simply for the use of the expression "Syrup of Figs," as applied to a medicine.)

A. The complainant company is generally addressed by its correct title, the "California Fig Syrup Co.," but is frequently addressed simply as the "Fig Syrup Co.," or the "Syrup of Figs Co." We receive letters and telegrams addressed in all three forms. These letters and telegrams are delivered to complainant by the postal and telegraph authorities, addressed to the "California Syrup of Figs Co.," the "Fig Syrup Co.," or the "Syrup of Figs Co."

Q. 102. What meaning is given by the trade in proprietary medicines, and by the public generally, to the term or words, "Syrup of Figs" or "Fig Syrup"?

(Objected to as incompetent, irrelevant and immaterial.)

A. The complainant's preparation is intended to be meant by that name.

Q. 103. Do you know whether or not the business name, "California Fig Syrup Co.," was ever used by any person or corporation prior to the use of it by the complainant, and if you have any knowledge or information on the subject, state what it is and the sources of your knowledge?

Mr. MILLER.—We object to that as incompetent, irrelevant and immaterial, because there is no question here regarding the name of the complainant company, the suit not being brought to restrain the use of the company's name, but only the sale of the medicine under the name of "Syrup of Figs."

Mr. OLNEY.—If counsel will admit the allegation contained in the bill of complaint, as follows, "That your orator and his predecessors in interest was the first person or firm or corporation engaged in the manufacture of a liquid laxative preparation, to adopt the business name of "California Fig Syrup Co." or "Fig Syrup Co.," or a business name of which the words, "Fig Syrup" were a part—if that is admitted to be true, I will withdraw the question.

Mr. MILLER.—We do not feel called upon to make any such admission. The suit has been brought against us for the use of that name, and therefore, we consider



it entirely immaterial, and, therefore, we do not feel called upon to make any such admission on the subject.

Mr. OLNEY.—I insist upon the question then, and ask the witness to answer.

A. The complainant was the first to adopt the name "Fig Syrup Co." or "Syrup of Figs Co." or "California Fig Syrup Co." as it is generally known, to the best of my knowledge and belief. About the time of adopting the name, I made inquiries of druggists and physicians, and examined textbooks and price-lists generally in use in the drug trade and was unable to find that the name had been used by any other company; and, afterward, I had an extended tour throughout the United States, and, in visiting the drug trade and investigating all matters of interest to the company, I was unable to find any company having the name "Fig Syrup Co." or "Syrup of Figs Co." existing in the United States.

Q. 104. Did you find that any person or firm had used the name "Fig Syrup Co." or "Syrup of Figs Co." or used a name in which the words "Syrup of Figs," or "Fig Syrup," formed a part, as a business name?

(The same objection.)

A. I didn't find that any person, or persons, or firm or other party had used the name "Fig Syrup" or "Syrup of Figs" as a part of the business name of any firm, company or corporation, until the appearance of some of the imitations upon the market, which purported to be made by various "Fig Syrup Cos.," but which I was informed were really made by Clinton E. Worden & Co., and other parties.



Mr. OLNEY.—I now formally offer in evidence all of the exhibits attached to the bill of complaint herein, namely, to wit, Exhibits “A,” “B,” “C,” “C,<sup>1</sup>” “C,<sup>2</sup>” “C,<sup>3</sup>” “D,” “E,” “F,” “G,” “H,” and “I.”

Mr. MILLER.—We object to each and every one of them as incompetent, irrelevant and immaterial, on the ground that no evidence is introduced to identify them, or to show their use, or explain in any way whatever what they are.

Mr. OLNEY.—I also give notice that upon the hearing of this case, I shall read from a book, entitled “Diseases of the Rectum,” by Joseph M. Matthews, M. D., that portion on page 279, relating to syrup of figs.

#### Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. In what year did you say you commenced to experiment on this medicine?      A. In the year 1878.

X. Q. 2. That was at Reno, Nevada, was it?

A. It was.

X. Q. 3. Were you at that time a clerk in a drugstore there?

A. No, sir; I was the proprietor of a drugstore there.

X. Q. 4. How long did your experiments continue before you perfected the medicine?

A. I didn't perfect the medicine as it is now prepared until the year 1885 or 1886; that is, I continued to make improvements and changes in the preparation down to that time.

X. Q. 5. When did you first get it into such shape as to put it on the market?

A. Early in the year 1879.

X. Q. 6. That was at Reno, was it? A. It was.

X. Q. 7. In what way did you put it on the market at that time?

A. I visited physicians and told them what I had made, and what its active ingredients were, and asked them to try it and recommend it to their patients. I think I also caused some reading notices to be inserted in newspapers, calling attention to the merits of the article, and I sold it to customers who called at my drugstore.

X. Q. 8. What newspapers did you advertise in at that time?

A. To the best of my recollection, the local newspapers, published at Reno, Nevada, the daily papers published there at that time, one or more of them.

X. Q. 9. What was the name of the paper?

A. The "Gazette" and the "Journal." I don't remember positively that the advertisements were placed in those papers that same year, but they were afterward placed in them.

X. Q. 10. You were the sole proprietor of the medicine at that time? A. I was.

X. Q. 11. What kind of bottles did you use at that time?

A. I used a bottle of the same shape, but made of green glass, and, to the best of my recollection, the name of the preparation was not blown in the bottles at that time.

X. Q. 12. (By Mr. ROWE.)—Similar to the ones you used to-day?

A. Yes, sir; smaller in size, in proportion and the price.

X. Q. 13. (By Mr. MILLER.)—What labels did you use on the medicine at that time?

A. We used a label similar to the label which we now use; that is, the name was printed on the label, and directions were printed on the label for use. But I don't remember the exact wording of the labels.

X. Q. 14. Have you one of those labels now?

A. I think not. To the best of my knowledge and belief, we have not.

X. Q. 15. Do you mean by your testimony to imply that the reading on the label was exactly the same as at present?

A. I mean that the wording may have been different, but that the directions were, I think, substantially the same as at present.

X. Q. 16. What was the wording on that label with regard to the figs used in the composition?

A. To the best of my recollection no mention was made of the figs, except in the name at that time.

X. Q. 17. Was the label which you were then using, similar in reading matter to the label which you were using when your company, the California Fig Syrup Co., brought the suit in this Court against the Improved Fig Syrup Co.?

A. The label had been changed at that time. In the year 1889, we placed upon the label the words, "California Liquid Fruit Remedy," for the first time. And we removed that phrase from the label in May, 1894. I speak

of the label which is pasted upon the bottle, not on the outside wrapper.

X. Q. 18. Did you have those words, "California Liquid Fruit Remedy," on the labels when you were selling the medicine for yourself in Reno, Nevada?

A. I did not.

X. Q. 19. When did you first put that name on there?

A. In May, 1889.

X. Q. 20. Have you none of those early labels in your possession or under your control?

A. I can't state without an exhaustive search of old papers and documents in possession of the complainant.

X. Q. 21. Did you use any wrappers at that time beside the label?      A. We did.

X. Q. 22. What did the wrapper contain?

A. Do you speak of the inside wrapper?

X. Q. 23. Any wrapper that was used in connection with the medicine.

A. We used an inside wrapper and an outside wrapper. The inside wrapper, in addition to the name and the name of the complainant company, after the complainant was organized and incorporated, contained, besides directions for use, a general description of the nature and properties of the article.

X. Q. 24. Did it state anything in regard to the constituents of the medicine?

A. On the wrapper that was in use in 1896, down to July, 1896, but which was not the original wrapper, both the inside and outside wrappers having been changed in 1889, the statement appeared that the preparation presented, "in the most elegant form, the laxative and nu-

trititious juice of the figs of California, combined with medicinal virtues of plants, known to act most beneficially on the human system, to form an agreeable and effective laxative," and other words following as to the complaints for which it would be beneficial.

X. Q. 25. Those words were contained on the circular or wrapper or label used by you, in connection with this medicine at the time you brought the suit in this Court against the Improved Fig Syrup Co., were they?

A. They were.

X. Q. 26. And when did you remove those words from the label? A. July, 1896.

X. Q. 27. Those words were also used, were they not, at the time you brought the suit against Frederick Stearns & Co. in the Circuit Court for the District of Michigan, I believe, were they? A. They were.

X. Q. 28. And they were also used on the labels when you brought the suit against Putnam at Boston?

A. They were.

X. Q. 29. Now, I shall request you to make a search, if you can, and produce one of the labels which were used on this medicine when you first originated it at Reno, Nevada, and before the incorporation of the California Fig Syrup Co., and ask you to produce it at a subsequent hearing of this case. Now, how long did you continue to manufacture this medicine and sell it at Reno, Nevada, on your own account?

A. Down to December 6, 1881, although, a short time previous to that, I arrived at an understanding with some other parties that they would form a company to manufacture and sell this preparation. At first we had an

idea of forming a partnership, but finally decided to incorporate.

Mr. OLNEY.—That is immaterial.

The WITNESS.—These parties decided then to incorporate and organized the complainant.

X. Q. 30. Now, at the time you were manufacturing and selling the medicine on your own account at Reno, up to December 6, 1881, as you have testified, where was the medicine manufactured, and by whom?

A. It was manufactured by myself and by my partner there at the time at Reno, Nevada, at our drugstore.

X. Q. 31. What was the name of your partner?

A. William Pinniger.

X. Q. 32. To what extent did you make and sell the medicine before you left Reno, and up to December 6, 1881?

A. Besides making such sale as a retail druggist would make ordinarily to his customers, I made some sales to some of the neighboring towns; that is to say, we received some small orders from California, and from some neighboring towns in Nevada for small quantities of this preparation, and we made some small shipments to California, and also to some neighboring towns in Nevada.

X. Q. 33. Under what name did you sell the medicine at that time?

A. Under the name "Syrup of Figs" or "Fig Syrup."

X. Q. 34. To what extent did you sell the medicine?

A. To the best of my recollection, the sales, down to 1881, did not amount to more than about five hundred dollars.



X. Q. 35. Was the name of the manufacturer placed on the medicine or its labels or wrappers at that time?

A. I think it was.

X. Q. 36. Whose name was on it?

A. I think, at the start, first my name, and afterward, I think, I took in a partner, and I think the firm name was printed, and at a later date, when I came to an understanding with these parties to form a company, I think we printed the name "Fig Syrup Co." on it.

X. Q. 37. How long did you use the name "Fig Syrup Co.," prior to the incorporation of complainant?

A. I think about two years or nearly two years.

X. Q. 38. So that you first put it before the market under the name of yourself as manufacturer, and then under the name of yourself and Mr. Pinniger, and then afterward, and for two years prior to the incorporation of complainant, under the name simply of the "Fig Syrup Co." Is that correct?

A. That is my recollection, although I am not positive that Mr. Pinniger's ever appeared upon it. I remember I had some understanding with Mr. Pinniger that that was to be separate from the partnership business, the general business, and that a company would be formed, and that he could obtain an interest in that company the same as others. After I discarded my own name, I remember using the name of the "Fig Syrup Co." for a time before the incorporation of this company. But I don't remember positively whether Mr. Pinniger's name was ever printed upon the label or not.

X. Q. 39. Up to December 6, 1881, and prior to the incorporation of the complainant company, did your

labels, wrappers, or advertisements state that the basis of the medicine was senna?      A. They did not.

X. Q. 40. What did they state with regard to the constituents of the medicine, if anything?

A. To the best of my knowledge no statement was published or printed as to the constituents of the preparation prior to the year 1886, excepting possibly in letters and correspondence.

X. Q. 41. What statement was there on those labels, or wrappers, or advertisements, used in connection with the medicine with regard to the presence of figs in the medicine in any form?

A. There was no statement, except that the name was used.

X. Q. 42. Was there any reference on those labels or wrappers to California figs, or anything to indicate that there were figs in it which came from California?

A. There was not; I didn't use the name, "California Fig Syrup Co.," until after the incorporation of the complainant.

X. Q. 43. I am not referring to the name of the company; I am referring to statements on the labels or wrappers, if any such were there, indicating that the medicine contained figs or the juice of figs, or any product of the figs?

A. To the best of my knowledge and recollection, there was no statement as to figs being used or as to any other substance being used in the combination.

X. Q. 44. In fact, the constituents of the medicine were not given forth to the public at all, were they?

A. Not prior to the year 1886, except through the medium of physicians and druggists and by personal statements and correspondence.

X. Q. 45. What year did you place on your labels the words, "California Liquid Fruit Remedy," that you have been referring to?      A. In May, 1899.

X. Q. 46. While you were manufacturing the medicine in Nevada, what were the constituents of it?

A. I must decline to state what were the constituents of the preparation, as it would reveal a trade secret of complainant. I have no objection to stating that senna and figs were used at that time.

X. Q. 47. What else was used besides senna and figs?

Mr. OLNEY.—You need not answer that, unless you see fit.

A. I must decline to give the individual names of the articles.

X. Q. 48. (By Mr. MILLER.)—On what ground do you decline?

A. That it would reveal a trade secret of complainant, to the great injury of complainant.

X. Q. 49. Do you not claim that the defendant is manufacturing an imitation of your medicine, and have you not brought suit here for the purpose of enjoining him from doing that?

Mr. OLNEY.—We object to that question for the reason that the claims of complainant in this action appear from the bill of *complainant*, and the statement of the witness would be only his opinion and not evidence; further, the bill of complaint shows that the claim is that

they are manufacturing an article, and dressing it, and marking it in imitation of the complainant's article.

A. We do not claim that the defendant is making the same thing as the complainant.

X. Q. 50. (By Mr. MILLER.)—Was there anything in your medicine at Reno, Nevada, besides senna and figs?

A. Yes, sir.

X. Q. 51. What was it?

Mr. OLNEY.—I instruct you that you need not answer unless you see fit.

A. I must decline to answer.

X. Q. 52. (By Mr. MILLER.)—In what form did figs enter into the medicine at that time?

A. In a liquid form, the solution of the soluble substance of the fig.

X. Q. 53. Do you mean the juice of the figs?

A. It might be called the juice, perhaps, of the figs, although we used dried figs then, as now.

X. Q. 54. How did you prepare the dried figs?

A. We dissolved the soluble substance of the dried figs, and added it in the combination.

X. Q. 55. What part of the fig did you dissolve?

A. The sugar and mucilaginous substance of the fig.

X. Q. 56. Did you use the skins and the seeds?

A. We did not. That is, the skins and seeds did not enter into the remedy, as they were separated from the soluble substance, and the later alone used.

X. Q. 57. How did you dissolve the fruit?

A. We dissolved the fig substance in hot water.

X. Q. 58. You used dried figs, you say?

A. We did.

X. Q. 59. Where did you obtain the figs from?

A. At the start we bought them at Reno.

X. Q. 60. You took those dried figs and put them in hot water until they were dissolved? Is that the idea?

A. We cut them up and macerated them, and pressed out the soluble substance in solution.

X. Q. 61. Did that produce a kind of a syrup?

A. It did produce a syrup or liquid; yes, sir.

X. Q. 62. And that liquid you put into the medicine, did you? A. We did.

X. Q. 63. In what proportions did you put it into the medicine?

A. After completing my experiments, the proportions that were adopted were, to the best of my recollections, substantially the same as at present, although we changed the proportions of some of the ingredients in 1886, and may have made since that time some slight change in the proportion of the fig substance. -

X. Q. 64. What were the proportions used at Reno?

A. The proportions that we used were ten pounds of dried figs to each one hundred gallons of syrup. That is, we used that quantity, and we have used that quantity since 1886; and, to the best of my recollection, it was substantially the same prior to that time.

X. Q. 65. Now, when you had reduced those ten pounds of dried figs down to a liquid or syrup form, how much was produced thereby?

A. It would give two or three gallons of syrup or liquid to each one hundred gallons of the medicine, but there would be only about one gallon, or seven or eight

pounds—a little less than one gallon—of the fig substance.

X. Q. 66. Now, that one gallon would consist of something beside the fig itself, would it not?

A. There would be about six or seven pounds of fig substance, with sufficient water to dissolve it.

X. Q. 67. As I understand, you would take ten pounds of dried figs and dissolve them in water, would you?

A. Dissolve the soluble part, strain out the soluble part.

X. Q. 68. How much of the fig was lost in that process? In other words, how much of the fig was left in the syrupy liquid that resulted?

A. Six or seven pounds.

X. Q. 69. Then the excess of the fig that was lost did not enter into the composition at all, did it?

A. It did not.

X. Q. 70. So, then you would have six or seven pounds of the fig product in one hundred gallons of your medicine, would you? A. We would.

X. Q. 71. Before you finally came to this proportion, had you used in your experiments larger proportions of the fig?

A. Yes; in making the experiments we used the figs more freely.

X. Q. 72. In what proportion had you used the figs in your experiments?

A. We had used a number of proportions. I only remember that I used them more freely, until I came to the conclusion that it would be better to use a small quantity.



X. Q. 73. Your first idea was to use a large quantity of figs, was it?      A. Yes, sir.

X. Q. 74. Was it your idea that you would get a beneficial effect in the medicine from using a large quantity of figs when you were experimenting? Was that your idea?

A. No, it was to counteract the disagreeable taste of the medicine, of the other ingredients.

X. Q. 75. Did it counteract the taste?

A. To some extent, yes.

X. Q. 76. Why did you reduce the amount of figs?

A. Because I found that the fig substance had a strong tendency to ferment; and I believed that the preparation would be less stable and uniform if I used too large a quantity of the fig substance.

X. Q. 77. Now, what effect, if any, did the fig substance have upon the medicine itself as used by you?

A. It simply helped to promote the pleasant taste in the medicine.

X. Q. 78. Isn't it a fact that it did not have any effect at all, either one way or the other, and was superfluous?

A. The fig substance was pleasant to the taste and really present in the compound, although not essential to the compound. That is, I might have used an equal quantity of honey or some other pleasant substance instead of the fig substance for the same purpose.

X. Q. 79. Then the fig does not have any effect on the compound, does it?

A. Except to promote the pleasant taste.

X. Q. 80. How does it promote the pleasant taste?

A. The addition of a mucilaginous and sugary substance tends to make a compound more agreeable to the palate.

X. Q. 81. You have other saccharine substance in there for that purpose besides figs, have you not?

A. We have.

X. Q. 82. What are they put in there for?

A. To promote the pleasant taste, to aid in preserving the remedy.

X. Q. 83. You testified in the case of the California Fig Syrup Co. against Frederick Stearns & Co., a suit brought in the Circuit Court of the United States for the Eastern District of Michigan, for the infringement of this name of yours, did you not?      A. I did.

X. Q. 84. Did you state in that case that in compounding your medicine you used one hundred pounds of figs to one thousand gallons of the mixture?      A. I did.

X. Q. 85. That is about the same that you are testifying to now, is it?      A. It is.

X. Q. 86. And you also testified, did you not, that when it was formed, one thousand gallons of your mixture would have but one gallon of the substance of the fig?

A. I did so testify, but I underestimated the soluble part of the fig, in stating my opinion at that time. I have found since, by more careful experiments, and by consulting the authorities recognized by pharmacists of the United States, that from sixty to seventy per cent of figs are soluble, and that we may and do obtain a larger quantity than I thought at that time.

X. Q. 87. So, after all these lawsuits that you have had on this subject, you have now come to the conclusion that you placed your estimate as to the amount of the figs used, when you so testified, at too small a figure? Is that a fact?

Mr. OLNEY.—We object to that as being an incorrect statement of witness' testimony. You are now asking him about the proportion of figs in that compound, not the amount that he used.

A. I stated at that time that I used the soluble substance of one hundred pounds of figs in one thousand gallons of the medicine, but in estimating what part of the fig was soluble and what was not soluble, I underestimated the soluble part.

X. Q. 88. (By Mr. MILLER.)—In one thousand gallons of your mixture, according to your present testimony, how much of the substance from the fig would there be?

A. Sixty or seventy pounds.

X. Q. 89. You stated in your testimony in the case referred to that, in the mixture of one thousand gallons of your medicine, there would be about one gallon of this substance from the fig, but that it might possibly run up to two, but that you did not think it would amount to more than that, but possibly it might be less. Did you give that testimony?

A. I gave some testimony as to that. I don't recollect the exact words.

X. Q. 90. I will read from the record in that case a portion of your testimony as follows: "Q. Then, when you state that you use one hundred pounds of figs to one thousand gallons of the mixture, you mean, I presume, the

soluble portion produced from the one hundred pounds of figs? A. Yes, sir. Q. You don't mean to say you utilized the entire one hundred pounds? A. No, sir. We get rid of the seed, rind, and possibly some of the pulpy matter. Q. So that the mixture of one thousand gallons would have about one gallon of this substance from the fig? A. Yes, sir; I say one, it might possibly be two, but I don't think it would amount to more than that. Q. Might possibly be less than one gallon? A. Possibly, if the figs happen to be very dry and hard, and more of the seeds and less of the soluble matter than usual." Did you give that testimony?

A. Some such testimony; I don't remember the exact words. I think it is substantially what I stated at that time, and it was based on some experiments that I had made. In making that experiment, I, in some way, made a mistake as to the results, and found, or thought that I had found, that the soluble substance of the fig was in about that proportion. Subsequent experiments, however, have shown me that a larger quantity of fig substance is soluble than I then thought. And it is true now, as I stated then, that I used the soluble part of one hundred pounds of figs to one thousand gallons of syrup, and the mistake was simply in estimating as to what part was soluble, and as to what part was insoluble.

X. Q. 91. Do you know now what part of one hundred pounds of figs is soluble? A. I do.

X. Q. 92. What part?

A. From sixty to seventy per cent—sometimes a little more, sometimes a little less, depending somewhat perhaps on the nature of the figs.

X. Q. 93. Now, how many gallons of that substance would there be in one thousand gallons of your mixture?

A. That would make eight or nine gallons; say, from seven to nine gallons.

X. Q. 94. When did you find out that you had made a mistake in the testimony which you gave in this former case, and which I have just read to you?

A. I don't remember the exact time. At a later date, however, I examined the United States Dispensatory and found that it states that from sixty to seventy per cent of the substance of the fig is soluble, and I made some experiments, which satisfied me that the authorities were right, and that I was wrong on that point.

X. Q. 95. When was that? That is what I am asking.

A. I don't remember. It is since I gave that testimony, but I don't remember the year. I have made experiments at various times since then. I have made more than one experiment, and I made an experiment quite recently.

X. Q. 96. So, if I understand you correctly, you take one hundred pounds of dried figs and dissolve them as far as you can in hot water, and you add the result so obtained to make one thousand gallons of your medicine? Is that correct? A. We do.

X. Q. 97. And you think that the soluble part of the fig that is so obtained amounts to about seventy per cent?

A. Seventy per cent of the figs, seventy per cent of the one hundred pounds.

X. Q. 98. Now where do you get your authority for the statement as to the soluble part of the figs?

A. In the United States Dispensatory.

X. Q. 99. That states that it is about seventy per cent, does it? A. From sixty to seventy per cent.

X. Q. 100. And you didn't know that at the time you gave this testimony which I have been referring to, did you?

A. I presume I knew it before, but I didn't think of it at the time. I had read the Dispensatory years previous to giving that testimony.

X. Q. 101. Now, if you put no figs into your mixture at all would not your medicine still subserve its purpose and effect for which it was intended? A. It would.

X. Q. 102. Would it not have the same flavor that it now has?

A. It would have the same flavor but not quite so agreeable to the palate.

X. Q. 103. Would it not be the same color and appearance? A. Yes.

X. Q. 104. And it would have the same effect?

A. Yes, sir, it would.

X. Q. 105. And it would be just as good medicine without the figs as with them?

A. It would be just as strong medicine and as good in that sense, although the addition of a pleasant substance to the medicine makes it a little more acceptable to the palate.

X. Q. 106. Do you to pretend to say that this small quantity of figs which you use in your medicine makes the medicine more palatable to the stomach?

A. To the taste and to the palate.

X. Q. 107. Do you state that?



A. Yes, it makes it more palatable in this way: to give an illustration, if you add a few drops of cream to a cup of coffee, the cream does not improve the flavor of the coffee nor does it add to the strength of the coffee, but it softens or loosens the taste so as to make it more agreeable to the average palate.

X. Q. 108. I don't want any illustrations of other things. I am asking you a simple question and you can answer it one way or the other. Do you testify under oath that the addition of the small quantity of figs which you put in your medicine adds to the pleasant taste of the medicine?

Mr. OLNEY.—The witness has answered the question and then went on to illustrate, as he had a perfect right to do.

A. I testified that it promotes the pleasant taste of the medicine.

X. Q. 109. (By Mr. MILLER.)—What do you mean by promoting the pleasant taste of the medicine?

A. I mean that it softens the effect of the combination

X. Q. 110. Can any one detect the flavor of figs in your medicine from tasting it?

A. You can't detect the flavor of figs in the medicine from tasting it, as I don't claim that the figs give a flavor to the medicine, the flavor being derived from aromatics.

X. Q. 111. Isn't that the same thing as promoting the pleasant taste?

A. Not to my mind. The distinctive flavor of the medicine is something different from the general taste of the medicine.

X. Q. 112. Could any one from tasting your medicine determine or ascertain whether or not there were any figs entering into it as a constituent?

(Objected to as calling for the opinion of the witness about other people, and therefore as being improper testimony; or as to the capacity of other people to detect a substance in a composition by the taste, which is not an issue in the case.)

A. I would say in reply that in my opinion the general effect of a compound rightly made is more pleasant to the general or unconscious taste than a compound containing less pleasant ingredients. Although I am of opinion that the individual or conscious taste which distinguishes one substance from another cannot tell all the ingredients in the compound by tasting it.

X. Q. 113. Now, after this long speech which you have made, will you please answer the question which I asked you, and which I will request the reporter to read to you?

(X. Q. 112 read.)

A. I think he could not tell whether it was fig substance which made it pleasant to the taste.

X. Q. 114. Is it not a fact that the use of the fig in your medicine is superfluous?

A. I think that I used that term in my previous testimony, meaning that the fig substance is really present without being an essential part of the compound. I may have misused the term, but such are the facts in the case.

X. Q. 115. Did you not testify in that case as follows: "We still continue to put in the fig juice, although we regard it as superfluous, excepting that we think that a certain amount of fig juice is not objectionable, and we

wish to adhere to the original form of making it." Did you not testify to that effect?

A. I think I testified substantially to that effect, probably; misusing the term "superfluous," and with the explanation that we would regard a large quantity of fig juice as objectionable, and that we don't attach the same importance to the presence of the fig substance that we would to the presence or absence of a medicinal agent.

X. Q. 116. Was that testimony which you gave, correct?

A. It was correct so far as my intention went, although it may not have been as full and as explicit as it should have been.

X. Q. 117. But as far as it went it was correct, was it?

A. With the explanations which I have just given I would say that it is correct, that we still use figs when we might use some other pleasant substance, because we first started to use figs; and the fig substance, while it is used, is not an essential part of the compound, or what I would call an essential part of the compound. That is, not a part of the compound which gives to it its distinctive aromatic and medicinal qualities.

X. Q. 118. This testimony which I have quoted says in substance that the figs are superfluous, though not objectionable, and that you continue to put them in because you wish simply to adhere to the original form of making the medicine. Is that correct?

A. That is correct, with the explanation I have given.

X. Q. 119. Well, have you given any explanations which change the effect of that testimony, or not? Now just please answer that question.

Mr. OLNEY.—We object to that and I instruct the witness that he need not answer unless he sees fit. It is for the Court to say whether he has made an explanation or not.

A. I don't think I can answer the question any better than I have already done.

X. Q. 120. Is the presence of the figs in your medicine at this time objectionable?

A. It is not. On the contrary, fig substance promotes the pleasant taste.

X. Q. 121. Is it superfluous?

A. I think I misused the term superfluous, and I don't regard it as superfluous in what I now believe to be the correct sense of the term now.

X. Q. 122. Do you put the figs in there at the present time because you wish to adhere to the original form of making it?

A. We do, and for the reason that it promotes a pleasant taste; and if we were to leave the figs out we would have to add some other substance in place of the figs, to answer to the same purpose, and we prefer to adhere to the figs, because we used figs at the start.

X. Q. 123. I will again read you the answer which you gave to the question we have been referring to in the other case as follows: "We still continue to put in the fig juice, although we regard it as superfluous, excepting that we think a certain amount of fig juice is not objectionable, and we wish to adhere to the original form of making it." Now, when you gave that testimony was that correct, and is it correct now?

A. My meaning was then correct, as I have explained it, and I still regard it as correct.

X. Q. 124. Do you want to change that testimony now in any way?

A. I wish to state that the meaning which I intended to convey was this, that the distinctive aromatic and medicinal qualities of the compound do not come from figs; that some other substance, pleasant substance, might be used in place of the figs to answer the same purpose, but that figs now are used and have been used from the beginning for the purpose, and if we added some other pleasant substance in place of the figs it would not change the character and effect of the compound, but that it would be necessary to add some other pleasant substance in place of the figs if we omitted the figs, in order to make the compound fully as pleasant to the taste as it is at the present time.

X. Q. 125. Now, Mr. Queen, isn't it a fact and don't everybody know it and recognize it as a fact, that the infinitesimal quantity of figs that you place in your medicine has no effect either one way or the other, and that you merely put them in there so that you could be able to say with truth that figs do enter into the composition of your medicine? Isn't that a fact?

A. It is not a fact, and I don't consider that a little less than one per cent is an infinitesimal quantity.

X. Q. 126. Well, we wont haggle on terms. I will withdraw the expression "infinitesimal" and then ask the question in another form. Isn't it a fact and doesn't everybody else know it to be a fact that the small quantity of figs which you place in your compound, has no ef-

fect either one way or the other, good, bad or indifferent, and that you continue to put it in there simply that you may be able to say with truth that figs do enter into the compound?

A. That is not a fact. We use several kinds of flavoring, some pleasant substances, in making our compound. It is a well known natural fact that a pleasant substance pleases the palate.

Mr. OLNEY.—Answer yes or no wherever you can. You have answered it no.

X. Q. 127. (By Mr. MILLER.)—Now, in order to test that question and your reliability as a witness, I will ask you to tell me what are the constituents at present of your medicine, so that I can see whether these figs promote the pleasant taste.

Mr. OLNEY.—I instruct the witness that he need not answer if by so doing he would be revealing the secret formula of complainant's preparation.

A. I can't answer the question without revealing the secret formula of complainant's preparation and violating the confidence which complainant has reposed in me.

X. Q. 128. (By Mr. MILLER.)—I didn't ask you for the secret formula; I asked you for the constituents of your medicine, and which you claim to the public are well known and which you say you have advertised at large. Now, what are the constituents of your medicine?

Mr. OLNEY.—I give the same instructions.

X. Q. 129. (By Mr. MILLER.)—Do you decline to answer the question?

A. I do decline to answer the question. If I may, I will state that the question is not correct in this respect,



that we do not state that we have advertised the names of all of the ingredients used.

X. Q. 130. Then it is a secret formula that you have, is it?      A. It is.

X. Q. 131. You don't publish it to the world?

A. We publish the active ingredients, the active principles, not the name of all the ingredients.

X. Q. 132. The only ingredient you publish is senna, is it not?

A. We have stated that we combine the laxative principle of senna with aromatic carminatives, sugar and water.

X. Q. 133. Is the fig an aromatic carminative, as you call it?      A. No, it is not.

X. Q. 134. Now those aromatic carminatives, as you call them, are put in for the purpose of giving the pleasant taste, are they not?

A. They are, and also for the medicinal effect.

X. Q. 135. Now what are those aromatic carminatives that you put in?

A. I must to decline to answer, as it would reveal a trade secret, to the great injury of complainant.

X. Q. 136. Would it be a great injury to the public to know what they are composed of?

A. It would be a great injury to the complainant to publish the names of all the ingredients we use.

X. Q. 137. Then your medicine is a quack medicine, inasmuch as it is prepared by a secret formula which you do not **make public**, is it?

A. It is not a quack medicine. We give all that the medical profession requires us to give in our advertise-

ments in the medical journals, and it is recognized by standard medical authorities and physicians generally throughout the United States as a legitimate and ethical remedy.

X. Q. 138. Before you published the fact that senna was the principal ingredient everybody knew that fact as well as you did, didn't they? A. No, they did not.

X. Q. 139. Physicians knew it, didn't they?

A. Only those to whom we made the statement.

X. Q. 140. Anybody that knew anything about a laxative knew it, did they not?

A. No, certainly not. They might have supposed it would be rhubarb or butternut or some other laxative.

X. Q. 141. Now a quack medicine is one that is manufactured by a secret formula, is it not?

A. It is not. It is a remedy which falsely claims to cure diseases which it does not cure.

X. Q. 142. That is your definition of a quack remedy, is it? A. It is.

X. Q. 143. Is there anything in the composition of your medicine that you are afraid to make public or that you are ashamed of?

A. There is not. There is nothing in the medicine but what would be a credit to complainant to publish to the world, but that other chemists would then manufacture or attempt to manufacture it. and take advantage of the knowledge thus given, to the injury of complainant.

Mr. MILLER.—In view of the refusal of the witness to answer a question which is absolutely necessary for the preparation of the defendants in this case, I now notify counsel that I shall report the matter to the Court and

shall ask that the suit be dismissed on the ground that the complainant refuses to submit himself to legitimate and proper cross-examination which is necessary and which has apparently been made necessary by the witness himself. In the meanwhile I shall examine the witness on another branch of the case.

X. Q. 144. What was the largest proportion of figs ever used by you in your experiments at Reno, Nevada, prior to the time that you settled down upon your final formula?

A. I don't remember. I think it was considerably larger than used at present.

X. Q. 145. What do you mean by considerably larger?

A. Say, possibly four or five times as much.

X. Q. 146. What induced you to experiment with the larger quantity?

A. I liked the taste of figs and I wished to use the substance of the fig to counteract the unpleasant taste of the ingredients, of some of the ingredients which I was using, while making the experiments.

X. Q. 147. Because you liked the taste of figs personally did you think that was going to make a good medicine by using it? Was that your idea in using figs?

A. That it would be pleasant to the taste of other people because it was pleasant to me; yes, sir.

X. Q. 148. And you thought that therefore you would use a large quantity of figs in it, did you? A. Yes.

X. Q. 149. You found out that you were sadly mistaken in that?

A. No, I did not. I found that fig substance does not keep for a long time, that it tends to ferment.

X. Q. 150. Did you know of the popular impression at that time that figs contained laxative properties?

A. I knew at that time that figs were eaten in large quantities in order to obtain a laxative action.

X. Q. 151. Was it not on account of that popular impression that you began to experiment with figs in this way?

A. It was not, because I knew that the soluble part of figs would not have such an action; I used figs because I wished something that was pleasant to the taste.

X. Q. 152. In the former case that has been referred to, did you not testify as follows: "At the time I first got up the combination I was impressed with the idea that I wished to make it pleasant to the taste, and I was trying to think of how many pleasant things I could put into it, and I put in some figs and before I concluded my experiments I concluded that I would have to make a remedy that would give satisfaction regardless of the quantity of figs used, and knowing that the figs had no medicinal virtue in medicinal doses, and intending that the laxative should act in doses of from one-half to one tablespoon, I came to the conclusion that the figs were superfluous; but as I had started in to make it that way, I continued to put in figs." Did you give that testimony in that case?

A. To the best of my recollection I gave substantially the testimony, and as I have explained before, I probably misused the term "superfluous," and I would also state in that connection that that was the reason that I used a smaller quantity of figs, because I wished a medicine which would be uniform in operation and stable and

permanent, which would not sour when bottled and sold to the trade. Therefore, I used a smaller quantity of figs than I had used in making the experiments.

X. Q. 153. If it be a fact that the figs are superfluous and that honey or any other saccharine matter would accomplish the same purpose as the figs in your composition, and if it be a further fact that the medicinal qualities of your medicine were attributable to some other ingredients in it, and not to the figs, why is it that you selected the name "Syrup of Figs," which on its face carries the idea to the public at large that figs enter substantially into the combination?

A. I desired to give the preparation a new and original name, and I was satisfied in my own mind that the name "Syrup of Figs" would not deceive the public, because figs are so well and generally known and freely used as a food, that I thought it would be impossible to make the public think that the fig substance was the active ingredient of the preparation, and it was not to my interest to have the public think that it was simply a syrup of figs made from figs, because then every family could make its own syrup of figs, and I had no desire or intention of attempting to deceive the public, and no interest in doing so.

X. Q. 154. By using that name did you intend to have the public understand that fig juice or fig syrup entered into the combination?

A. I probably thought; without being able to recollect the exact thought at the present time, I probably thought that the public would think that some figs were used in making the preparation.

X. Q. 155. From the use of the expression "Syrup of Figs" would not an ordinary individual who had no technical knowledge of pharmacy, naturally conclude that the substance was the juice of the fig or fig syrup, or prepared from the fig? Is not that the natural and ordinary meaning of the words?

A. It was my opinion, and subsequent investigation has confirmed my belief, that the public would not regard the figs as the active ingredient of the preparation, although they might think that figs were used in making it, that the fig substance formed a part of the combination.

X. Q. 156. If I hand you a bottle labeled "Syrup of Aconite" would you not conclude that it was a syrup made from aconite?

A. I would conclude that the aconite was the active principle of such a syrup, because aconite is a well known medicinal agent.

X. Q. 157. Now, if a bottle were handed an ordinary individual labeled "Syrup of Figs," would he not on the same principle conclude that the figs were an active constituent of it?

A. I think not, because figs are even better known as a food which may be eaten freely, than aconite is known as a medicinal agent.

X. Q. 158. If a bottle were labeled "Syrup of Prunes," would not an ordinary individual who has no technical knowledge of pharmacy naturally conclude that the active ingredient was prunes in some form?

A. I think not.



X. Q. 159. What would he conclude was the active ingredient?

A. If it was sold as a medicine he would conclude that there was some medicinal agent used. If it was sold as a confection he would probably think that the flavoring principle was obtained from prunes, but that it had no medicinal action.

X. Q. 160. If you go into a drugstore and ask for a glass of soda water and see a bottle there labeled "Strawberry Syrup," and you wanted that kind, would you not naturally conclude that the main ingredient there was strawberry, in some form?

A. I would enclude that the flavoring principle was strawberry in some form, although I would not conclude that it had what I would call an active ingredient, if you mean by an active ingredient a medicinal effect.

X. Q. 161. Do you undertake to say on your oath that in your opinion, when a bottle of syrup of figs is exhibited to an ordinary individual who has no knowledge of pharmacy, that he does not at once suppose that the active ingredient of that medicine is the juice or syrup of figs or a product of figs in some form?

A. That is my opinion, and an extensive contact with the public has confirmed that opinion. The statements of many individuals that I have met have confirmed the opinion that people would think it was a medicinal compound and not simply a syrup made from figs.

X. Q. 162. Why did you, in getting up your labels, put upon them these pictures of young ladies gathering figs, and also the picture of a branch of a figtree containing figs? What was your idea in getting up that?

A. To draw the attention in order that people would read the advertisements.

X. Q. 163. Why did you think that the fig would attract more attention than anything else?

A. It was simply a fancy of the artist who got up the pictures.

X. Q. 164. Did you not instruct him to make that picture yourself?

A. Yes, he showed me some sketch and I instructed him to make it.

X. Q. 165. Then why did you say it was a fancy of the artist that put those pictures on that box?

A. Because I told the artist to get me up a design for a box, a paper box. I told him to make it an ornamental design, and I didn't draw out the design myself and didn't tell him the details of it. I left it to his fancy and judgment and he showed me the design and I kept it.

X. Q. 166. Did he suggest the fig as a design or did you suggest it?

A. To the best of my knowledge I suggested that the ornaments consist of fruit and flowers. I observed afterwards that he had introduced upon the design some pictures of a calla lily as well as the picture of a fig branch, and I liked the design and accepted it.

X. Q. 167. You took out the calla lily, did you?

A. No, sir; I left it there.

X. Q. 168. Is it in your design now? A. It is.

X. Q. 169. Do you mean to tell me, Mr. Queen, and do you expect me to believe that when you got up this label of yours, that you went to an artist and simply told him to get you up a suitable design, and that he got up a de-

sign consisting of a fig or a branch of a figtree with the fruit on it and all these young ladies gathering figs, without your suggesting to him that you wanted something of that kind? In other words, was it the idea of the artist to use the representation of a figtree or was it your idea?

A. Your question requires explanation, as we didn't use the picture of the lady and the fig branch at the time that the original design was gotten up by the artist. I had some conversation with an artist upon the subject. His name was T. F. Laycock, at Reno, Nevada. I asked him to get me up a design, an ornamental design, for a proprietary remedy. In the course of this conversation, to the best of my recollection, I suggested that the ornaments consist of a fig branch or fruit, and also of flowers, and he went off and selected the fig branch and arranged the details and showed them to me before I accepted the design. I had previously had the same artist get up other designs for me, of a floral ornament; and while I became responsible for the use of the fig branch by accepting it, and may have suggested the use of the fig branch in some shape, yet I didn't draw up the design myself or tell him just how to arrange it in detail.

X. Q. 170. That I can well understand, but is it not a fact that you suggested to him the use of the fig branch?

A. I think possibly I did.

X. Q. 171. Don't you know that you did without any "perhaps" about it?

A. I don't remember positively whether I said a fig branch or a fruit branch. I remember suggesting that he get me up a design consisting of flowers and fruits or

figs, as ornaments, and I accepted the responsibility of the design after the artist had executed it, by using it.

X. Q. 172. Did you tell the artist what medicine you were going to apply the design to?

A. I may have told him the use to which the medicine was to be put. I don't think I stated to him the nature or composition or anything on that subject.

X. Q. 173. You told him that you wanted a design for a laxative medicine, did you?

A. I probably did, although I don't remember the exact words used at the time.

X. Q. 174. So it comes down to this after all, that wanting a design for that medicine, you employed an artist to draw up one, and you suggested to him that you would like to have a fig branch amongst other things, and he went off and drew up a design of a fig branch. Isn't that about the way of it?      A. That is about it.

X. Q. 175. Now, why was it that you selected the fig branch instead of any other fruit? What induced you to give preference to the fig branch?

A. I wished some kind of an ornamental design, and I had used the name "Syrup of Figs," and probably thought that figs—I don't know that I said a fig branch; I probably suggested that some display of figs and flowers would make an attractive design and distinguish it from other preparations, other designs then on the market, and arrived at an understanding with him that he would draw up an artistic design to be used as the wrapper of a proprietary medicine.

X. Q. 176. Would not a design of an apple branch

with apples on it be just as attractive and artistic as this branch of figs with figs on it?      A. I think it would.

X. Q. 177. Then why did you give the preference to figs?

A. I don't know that I gave the preference to figs at all, until after the artist had presented his design. I remember that the idea of using the branch as he used it was not original with myself, that I was uncertain in my own mind as to whether to use a basket of fruit or a tree or a branch, and I left the details to the artist. And the only way was to make something that was attractive, and when he presented the design I thought it was satisfactory, and accepted it.

X. Q. 178. The branch of a figtree with figs on it had been used as a design for laxative medicines prior to that time, had it not?      A. The design of a single branch.

X. Q. 179. I mean a design substantially like the design represented on the face of your label, consisting of a branch of a figtree with a representation of figs upon it?

A. I have never seen such a design on any other proprietary medicine, to the best of my knowledge and belief.

X. Q. 180. You have seen it since then, have you not?

A. Only on the imitations, what I consider the imitations of our remedy.

X. Q. 181. You have seen it on bottles, have you not, since then, that were used long prior to the time that you got up your medicine in Nevada?

A. I have never, to the best of my knowledge and belief, seen any similar design. I saw one design of a tree and perhaps a mine with a pick or something of that kind—a landscape scene. But that design was not, as far as

I know, a close facsimile or representation of the design that I have used.

X. Q. 182. When did you get up the design consisting of the figtree and the young lady holding a fig branch in her hand and picking figs therefrom, which appears on your label?

A. I think it was in about 1890. It may have been a year or so before or a year or so later, but I think it was about 1890.

X. Q. 183. And when did you get up the other design consisting of a fig branch alone, which appears on the face of the label?

A. In 1882, I believe it was, or 1883; I think it was in 1882.

X. Q. 184. When you got up this second design how did you come to select a representation of this figtree or fig branch?

A. Mr. Clay, who represented a lithographic establishment at Cincinnati, Ohio, came to me with a picture and solicited permission to make for us some posters, and stated that he thought that this picture of the woman in a similar position would make an attractive design for a poster, and that, among other things, she might hold in her hand a fig branch; and I placed an order with him for these posters, and that order was executed. And afterward I commenced to use the picture for other purposes and placed it on top of this package in 1896—July, 1896, and on the bottom of the package.

X. Q. 185. You had used prior to that time the representation of a lady holding a fig branch, had you not?



A. I don't remember of using such a design prior to that time.

X. Q. 186. When did you first commence to use the picture of the woman holding a fig branch in any form?

A. To the best of my recollection it was possibly 1888 or 1889. It may have been 1890, but don't think it was earlier than 1888.

X. Q. 187. Is it not a fact that these designs consisting of a fig branch with figs on it, and of a young lady holding a fig branch in her hand and gathering figs therefrom, were adopted for the purpose of carrying out the impression to the public at large that figs entered into the composition of this medicine, and that its laxative principles were due to the presence of figs therein?

A. It was not. We got up these designs to attract attention while people would read what we had to say to them on the subject. And we had used other designs on which fig branches did not appear at all. For example, at one time we used a picture of a woman apparently in the act of taking a dose of medicine from a small glass, and in the rear were some palm leaves and so forth, which was one of the advertisements that we had used extensively to attract attention; no fig branch appeared in that case at all.

X. Q. 188. When did you discontinue using that?

A. I don't think we have used that design for a couple of years.

X. Q. 189. But in place thereof you have been using a picture of a lady holding a fig branch in her hand?

A. We used this previously and since then. That was gotten up for us by some artist, I think four or five years

ago, and we used it up to a year or two, then changed back to this old picture of the fig branch, and have had other pictures and designs which we have used from time to time.

X. Q. 190. You use on your advertisements on walls and fences throughout the country, a picture of a woman holding a fig branch, do you not?

A. We have very extensively.

X. Q. 191. Now do not those pictures generally carry the impression to the mind of an ordinary individual that the laxative properties of your medicine are due in some way to the presence of figs therein?

A. That is a question calling for an opinion, and my opinion is that people may think that some figs are used in the preparation, but for the reason that figs are so freely used as a food, I don't think that the people generally will believe, by reason of any fig branches that we may use, that the active ingredients are obtained from figs. Now I don't know but what a good many people would take it for a pear, a picture of a pear, as readily as they would take it for a picture of a fig.

X. Q. Did you select it for the purpose of having them take it for the picture of a pear? A. No, I did not.

X. Q. 193. You wanted them to take it for the picture of a fig, did you?

A. I didn't care how they took it. I told the artist that he could use a fig branch, and he did so.

X. Q. 194. Your design was gotten up so that the public would take it to be the representation of figs. Is not that the fact?

A. Well, I suppose it is a fair inference.

X. Q. 195. Now, why did you want them to take it for the representation of a fig in preference to any other fruit?

A. I wished to attract attention. Our posters consisting exclusively of reading matter, it would probably be read by very few if their attention was not attracted to it in some form. I think that a picture draws attention, and then their statements as to the properties of the article and the name of the manufacturer will be read by all the people.

X. Q. 196. Then the only reason you can give for selecting the fig as a representative of your medicine is that you wished to attract attention? Was that your idea?

X. Q. 197. Now, why did you think that the fig would attract attention any more than any other fruit?

A. We didn't think that the fig would attract attention any more than any other fruit. I thought that a woman holding a branch in her hand would attract just as much attention as a woman having hold of a figtree or a fig branch. But some one suggested, possibly I suggested myself, the fig branch; and, having seen an original painting of some artist, of a woman in that position, holding something in her hand—it may have been a musical instrument or something else—and I remember suggesting to the artist or his suggesting to me, that she hold a fig branch in place of the musical instrument, or whatever it may have been, that the woman had in her hand. Of course, whether I suggested it to the artist or whether the artist suggested it to me, I became responsible for the use of the fig branch. It happened just in that way, that the artist or myself suggested using a fig branch, and the pic-

ture of a woman, as a picture that would attract the attention of people.

X. Q. 198. Then when you used this design you don't intend or desire that the public should obtain the impression that the medicine on which it was placed was truly a syrup of figs, or that figs give it its laxative properties. Is that a fact?

A. Yes. It was not our intention to deceive the public in that respect at all.

X. Q. 199. That would be deceiving the public, would it not?

A. To state that the figs were the active ingredient or principle, or that the active principles of the preparation were derived from figs, would be to deceive the public.

X. Q. 200. The expression "Syrup of Figs" is not descriptive then of your medicine? A. No, it is not.

X. Q. 201. Is it prevented from being descriptive by reason of the fact that in no true sense it could be called a syrup of figs or fig syrup? Is that the reason why you think it is not descriptive?

A. No, it is not, for the reason that even if it contained fifty or seventy-five per cent of fig substance, still the name would not be descriptive; because the fig substance would not give character or effect to the medicinal compound. It is not a question of proportion.

X. Q. 202. In other words, it matters not how great a proportion of figs is in it, that would not make it descriptive, is it? That is the idea?

A. Not unless it were wholly made from figs. If it were one hundred per cent figs, then what medicinal char-

acter there would be would necessarily be derived from the figs, in that event, which is not in accordance with the facts.

X. Q. 203. In your former case were not the following questions asked you, namely: "You stated in your direct examination that this expression, 'Syrup of Figs,' or 'Fig Syrup,' was not descriptive of the article, I believe—is that correct? A. Yes, sir.

Q. Was that answer based upon the fact that there is such a small proportion of the article fig that it could in no true sense be said that the article was a syrup made from figs?

A. It was principally based upon the fact that the remedy is manufactured and advertised and sold as a medicinal laxative compound, and because the medicinal virtues of the preparation do not depend on the figs used in the combination; and possibly your statement was partially the reason or one of the reasons, although I think it a minor reason, as to why I state that the name is not descriptive; and I wish to be understood now as stating that the name would be a misnomer if used in a descriptive sense, as the preparation is not a syrup produced from figs, but has a very small portion of figs in the combination."

A. I gave substantially some such statement, I think, to the best of my recollection.

X. Q. 204. Would the name be a misnomer if used in a descriptive sense?

A. It would be a misnomer if applied to a medicinal compound in a descriptive sense.

X. Q.205. And that would be a misnomer, would it not, because the preparation is not a syrup produced from figs? Is not that a fact?

A. Because the figs do not give character and effect to the preparation.

X. Q. 206. Is your medicine a syrup produced from figs?

A. Only in part, and that part is not the part which gives character and effect to the compound.

X. Q. 207. You stated in the answer which I have just read to you of your former testimony that your medicine is not a syrup produced from figs. Is that correct?

A. Yes, sir; in the sense of not being produced wholly from figs.

X. Q. 208. And therefore to use the term syrup of figs in a descriptive sense under such a situation as that, would be a misnomer, would it?

A. Yes, sir; it would be a misnomer, to use it in a descriptive sense.

X. Q. 209. Now in view of this fact, if the public at large or people who do not have a scientific knowledge of pharmacy, believe when they see this name syrup of figs on your bottles whenever they purchase it, that they are purchasing a syrup made from figs, then they are being deceived, are they not, when they believe that?

A. I don't think that they believe that the fig substance is the active principle.

X. Q. 210. I didn't ask you that question. I must request you to answer questions as I give them.

(X. Q. 209. Read.)

A. We don't believe they are being deceived by any



act of complainant in this case. If a person knows anything as to the qualities of figs and is in the habit of eating them as a food, in my opinion, he would not be deceived, and if he does not know anything about figs, he would not necessarily come to the conclusion that the compound was prepared wholly from figs, and if he had an erroneous opinion on the subject, why of course he would be in error.

X. Q. 211. Can you answer the question yes or no?

A. If in error upon the point he would be in error, I presume. That is my understanding of a correct answer.

X. Q. 212. Well, I stated the conditions in a very plain manner, it seems to me, and I am entitled to an answer either yes or no, if you can give it. Now I will ask you in the first place can you give an answer yes or no to the question?

A. I don't think I could give an answer to the question which would be simply yes or no, which would be in conformity with the general facts in the case and the general knowledge of the public on the subject.

X. Q. 213. I will then put the question in another form. A person desires a laxative medicine and he goes into a drugstore and asks for a laxative medicine, and the druggist hands him down a bottle of your syrup of figs, and this person has never seen nor heard of the same up to that time. Now if he buys that medicine under the supposition that it is a syrup composed or made from figs, then he is being deceived, as a matter of fact, is he not?

A. I don't think so. I think that he would be simply in ignorance of the facts. I don't think that any actual deception exists unless the complainant or one of his

agents or some druggist should make a false statement to him on the subject. Being in ignorance of the point and being deceived on the point appear to me to be different things.

X. Q. 214. If you are squeamish about the use of words, then I will put it in another form. Would not the purchaser be misled?

A. He would be misled by false statements if false statements were made to him, perhaps, but if no statements were made to him he would be simply in ignorance of the facts, if he knew nothing about them.

X. Q.215. When he bought this laxative medicine, labeled with the words "Syrup of Figs" and he knew nothing of his own knowledge about the actual constituents of it, if in buying it he was under the impression that it was a syrup made from figs, then as a matter of fact he would be mistaken and misled, would he not, in view of the fact that it is not a syrup made from figs?

A. If he thought it was a syrup made from figs then he would be mistaken.

X. Q. 216. (By Mr. ROWE.)—You stated, did you not, that when you first selected the name "Syrup of Figs," that in looking for a name descriptive of your preparation you chose that not for the reason that there was a prevalent and popular impression that figs were a laxative, that you might profit by that popular impression; you didn't select it for that reason, you stated?

A. I did not. I did not, and moreover, I was not endeavoring to select a descriptive name. You asked me the question if I stated that I was trying to select a descriptive name. I sought to avoid a descriptive name.

X. Q. 217. Now, I ask you if you selected the word "Syrup of Figs" because you were aware of the prevalence of the popular impression as to the laxative quality of figs and in order to profit upon that popular impression, you chose the word "Syrup of Figs?"

A. I did not.

X. Q. 218. Did you ever know Dr. Bishop?

A. I did.

X. Q. 219. Did he reside in Reno at the time that you first prepared this medicine? A. He did.

X. Q. 220. Did you ever consult with him in regard to the selection and choice of a name descriptive of your medicine?

A. I did not. I stated the facts to him after I had decided to give the name to the article. I stated what name I had given to it and what the active ingredients of the preparation were.

(At the hour of 12:30 P. M. a recess was made until 2 P. M., at which time the cross-examination of R. C. Queen was resumed as follows:)

(By Mr. MILLER.)

X. Q. 221. In the case of the California Syrup of Fig Co. against Frederick Stearns & Co., in the Circuit Court for Michigan, heretofore referred to, were you not asked this question of cross-examination, as appears from page 112 of the printed transcript of record: "Q. Now, as for all this talk and these long explanations, I will ask you the point-blank question: Is it not a fact that your sole reason for selecting the name 'Syrup of Figs' or 'Fig Syrup' was because there was a popular impression

among people generally that figs contain laxative properties, and this being a laxative medicine, it was your desire to give them the impression that this medicine contained some product of figs, and therefore had the laxative qualities of figs, and that you were thereby endeavoring to take advantage of this popular opinion—is that a fact or is it not—you can answer the question either one way or the other, it seems to me, without any long explanation” ? And didn't you answer that question as follows: “I don't think that is wholly the case; I do think that one of the reasons that may have influenced me in giving it the name ‘Syrup of Figs’ was the idea that it would not convey any wrong meaning to the minds of the people; if I had thought of the name ‘Syrup of Green Persimmons,’ for instance, I might have thought that the people would think it unpleasant to the taste, or that they would not so readily understand that I was advertising a laxative remedy.” And were you not immediately afterward asked the following question: “You have stated that the reason proposed in my last question was not wholly the reason; I will ask you whether it was partially, or entered into your reason for selecting the name of ‘Syrup of Figs’ or ‘Fig Syrup’ in this connection”? And did you not answer as follows: “I think that part of the statement as you made it may partially have influenced me in giving it the name; in other words, I remember I thought that the people would more readily understand that this remedy was a laxative remedy if given a name including the word figs, which people generally regarded as a laxative kind of food. I am stating and giving my answer to the best of my recollection as the question pre-

sented itself to me at the time I named the medicine, and some of the thoughts come back to me quite distinctly, but I don't pretend to recall each and every thought upon the subject, or exactly in the order in which they occurred, but my recollection of the thoughts that occurred at the time is sufficiently distinct to make me know that my answers and statements are substantially correct." Was not that testimony given by you in the case referred as, as I read it?

A. I think that such questions were put and answered at that time in the language quoted from the book. To the best of my recollection I did give such answers, believing that the name was an appropriate one perhaps for a laxative medicine by reason of the fact that figs are used and used freely and generally as a food which has a laxative action, when taken in large quantities, and therefore I was satisfied in my own mind that while the name might be suggestive, yet that it would not be deceptive.

X. Q. 222. Is not your position and contention in this matter about as follows: that the words "Fig Syrup" or "Syrup of Figs" are not descriptive of the article itself, but that they constitute a mere fanciful name, for the reason that there is such a small percentage of figs in the article that it could not truthfully be denominated properly "Syrup of Figs" or "Fig Syrup," or syrup made from figs? Is not that about your position in this matter?

A. It is not. My position is this: that figs are not a medicinal agent, and therefore they do not give character and effect to this medicinal compound, and would not

give character and effect to the compound even if used in large quantities.

X. Q. 223. Were you not asked the following questions and did you not give the following answer in the case of the California Fig Syrup Co. against Frederick Stearns & Co., as appears by page 137 of the printed transcript of the record, namely: "Let me see if I understand your position correctly from the testimony you have given; is not your position this: that the words 'Fig Syrup' or 'Syrup of Figs' are not descriptive of the article itself, but that they constitute a mere fanciful name, for the reason that there is such a small percentage of figs in the article that it could not truthfully be denominated properly 'Syrup of Figs' or 'Fig Syrup' or syrup made from figs.

A. Your statement is largely correct, but I wish to say that I don't consider that the proportion of figs in the combination makes any great difference one way or the other; I think it is a fanciful name because it is manufactured and sold as a medicinal laxative compound to be taken in small doses of from one-half to one tablespoon to act on the liver, kidneys and bowels, and because figs have not the power to impart to the medicine its medicinal virtues; if the proportion of figs were to the whole as one to ten thousand, yet the medicinal virtues of the preparation were given to it by the figs—in other words, if figs were as powerful in their action, or if they had the medicinal nature of strychnine, for instance, a very small proportion of figs would serve to give to the preparation its medicinal effect; but as the juice of figs is laxative only in a general way, and only to a certain extent, and



must be taken in large quantities to have even a laxative tendency, of perhaps a quart or more, like the fresh juice of a great many other fruits, I consider that it does not give to the preparation containing other and more powerful ingredients its medicinal virtues, and that therefore the name is fanciful and not descriptive." Did you give that testimony?

A. I did, to the best of my recollection.

X. Q. 224. According to these articles of incorporation which you have put in evidence here, this corporation appears to have been incorporated on December 3, 1881, with Richard E. Queen, James H. Kincaid, George Alt, Simeon Bishop, and Thos. E. Hayden as incorporators, I believe?

A. They were the incorporators.

X. Q. 225. What did Mr. George Aalt have to do with the business?

A. He was one of the parties who had agreed with me to form the company.

X. Q. 226. Was he connected with you in the business prior to the formation of the company?

A. Well, I think he was. Yes, he was.

X. Q. 227. Where was your factory situated at that time?

A. At the time of the incorporation, at Reno, Nevada, Virginia street, at my drugstore.

X. Q. 228. Did Alt see the manufacture at that time?

A. After the incorporation of the company he did.

X. Q. 229. Did the company continue to make the medicine at the old place after the incorporation?

A. For a period of from December, 1881, down to the latter part of October, 1883, the medicine was not manu-

factured at the old place, but was manufactured by Mr. Alt.

X. Q. 230. Where was it manufactured during that time?

A. It was manufactured at or near his place, at his place, I think, a couple of miles out from Reno.

X. Q. 231. Was the manufactory at that time situated at or near Glendale, in the State of Nevada?

A. It was.

X. Q. 232. And Mr. Alt was then manufacturing the medicine at that place, I understand, was he?

A. Yes, after the incorporation down to the fall of 1883.

X. Q. 233. Of course, he knew the formula for it, did he not?

A. He knew the formulas as used at that time.

X. Q. 234. Were any figs kept exposed in any of the places around the factory where they could be seen during that period of time?

A. I don't know, of my personal knowledge.

X. Q. 235. Did you not say to Mr. Alt about that time that it would be well to keep figs in sight in order that people coming into the factory would think that figs were used in the manufacture of the compound?

A. No, I didn't, not in that language nor to that effect, or with that meaning.

X. Q. 236. Do you mean by that you stated it to him with some other meaning?

A. I told Mr. Alt, instructed him, to make this preparation, told him how to use the figs and so forth, and stated to him that the figs did not give a medicinal

action to the preparation, but were used because they were pleasant to the taste, and I remember turning over to him, with some other things, a lot of figs that I had on hand, and, after instructing him how to make this preparation as made at that time, he took them to the company's factory, and he may have exposed them there; but so far as I was concerned, and so far as the other stockholders of the company were concerned, I am satisfied not with any intention of deceiving the public.

X. Q. 237. Isn't it a fact that during the time that Alt was manufacturing the medicine for the company, he has stated that no figs were used in the compound or medicine?

A. He stated in the case against the Improved Fig Syrup Co., he gave an affidavit, if I remember rightly, that he did not use any figs at that time, and I presume that he knew whether he did or not. If he did not, he did not carry out my instructions.

X. Q. 238. The figs were kept there, though, during that period of time, were they not?

A. I don't know. I don't think I went to the factory after teaching him how to make it. I don't think I went to his residence or at the place where the manufacture was going on during the whole time that he was manufacturing.

X. Q. 239. When you instructed him as to how to manufacture the medicine, didn't you tell him as a matter of fact that the figs imparted no special virtue to the medicine?       A. I did.

X. Q. 240. Did you give him to understand that the

medicine could be made as well and of as good quality without the figs as with them?

A. I might have said it would be as good medicine, but I didn't state that it would be equally as pleasant without the figs as with them.

X. Q. 241. Do you testify now that the quantity of figs which you put in this medicine adds one whit to the pleasant taste of the medicine? A. I do.

X. Q. 242. Don't you know that if the figs which you put in were omitted entirely and nothing else was placed in its stead, that the medicine would have identically the same taste that it has now?

A. I do not. It would still be an effective and pleasant medicine without figs. I merely testified that it would be a good deal more pleasant—

X. Q. 243. (Interrupting).—Does not the pleasant taste in the medicine come solely from some of the other ingredients that are put in for that purpose?

A. If you mean by "taste," the flavor of the medicine, I say this: that is, I mean the distinctive taste, the flavor, comes from other substances, and not from figs.

X. Q. 244. Isn't it a fact that the quantity of figs put in the medicine is so small that it could not possibly affect the taste one way or the other? A. It is not.

X. Q. 245. If that is true, then the medicine made without those figs would taste different from the medicine made with the figs, wouldn't it?

A. In—about the same way, only a little more so, that is, it would be stronger, it would have a stronger taste.

X. Q. 246. Have you ever experimented in that line

and made the medicine without the figs to see whether there would be any difference?

A. I have made some experiments; I don't know that I have made any experiments exactly in that way.

X. Q. 247. Well, have you made any medicine without the figs in it?

A. Well, I think we have on one or two occasions.

X. Q. 248. What did you do with the medicine?

A. In the year 1891, if I remember rightly, our manufactory at Louisville was burned down and nearly all of our materials on hand were destroyed. We received some orders for the goods, and for a few days, while awaiting the arrival of a new supply of figs, to the best of my recollection, I stated to the party who was doing the actual work of manufacturing at that time, that he could use a little more sugar and make up a few lots of the medicine without any figs in, but to the best of my knowledge that has not occurred since 1891. It did occur at that time, according to my recollection, but not since then. I don't know whether I tasted it without the figs or not. I think, perhaps, for some reason or other it occurred on one or two occasions previous to that.

X. Q. 249. Did you have any complaint from your customers in regard to that medicine?

A. I didn't on that account.

X. Q. 250. Now, during what time was Mr. Simeon Bishop connected with your company—

A. He was one of the incorporators of the company, and withdrew shortly after the incorporation.

X. Q. 251. Now, shortly after the company was organized and the medicine was being manufactured up in

Reno, Nevada, didn't Mr. Bishop visit the factory there and see you and ask you substantially where were your figs, and didn't you reply to him that you didn't use figs?

A. No, I didn't. On the contrary, I showed him the figs and told him I used figs. I told him the laxative properties were obtained from senna. He took a sample of the preparation, and came back and told me that he had given it to his children to use, and it acted favorably, and he also stated to me that, of course, there was no medicinal action derived from the figs.

X. Q. 252. When did the company move its manufactory to San Francisco? A. In the fall of 1883.

X. Q. 253. And how long had it been manufacturing the medicine prior to that time in Nevada?

A. From the beginning of 1882 to the fall of 1883, a period of about twenty-one months, I think.

X. Q. 254. I notice in your articles of incorporation that you state that the amount of capital stock is one million dollars. I presume that was put in there simply in the ordinary way of forming a corporation where a nominal amount of capital stock was paid in?

A. Yes, sir.

X. Q. 255. You don't pretend that the million dollars was put in in money, do you?

A. No, sir; I do not.

X. Q. 256. Now, when did you commence manufacturing in Louisville, Kentucky?

A. In 1886, the beginning of the year 1886.

X. Q. 257. Do you know the author of this medical book which has been referred to, entitled "A Treatise on



Diseases of the Rectum," by Joseph M. Matthews, M. D.?

A. I do.

X. Q. 258. Where did you get acquainted with him?

A. In Louisville, Kentucky, about twenty-five years ago. But I don't think I have seen him for fifteen years or thereabouts.

X. Q. 259. Did you ever explain to him the composition of your medicine?

A. I didn't personally. Our eastern agent, I believe, was the one who told him about the composition of the medicine.

X. Q. 260. In this Exhibit "K," being page 10 of the advertisements of the journal entitled "Annals of Hygiene," for December, 1893, what does the picture there shown intend to represent?

A. It represents the picture of a woman holding a fig branch in her hand. Possibly she may appear to be pulling figs from the tree.

X. Q. 261. Now, prior to the publication of that advertisement, had you had advertisements in other medical journals, of your preparation? A. We had.

X. Q. 262. When did you first commence advertising in medical journals? A. In 1886 or 1887.

X. Q. 263. Were those advertisements the same as this one, which I am now referring to?

A. Not exactly the same. We didn't have that picture, and they were worded somewhat differently. They stated, however, that we used the laxative principles of senna and aromatic carminatives and sugar, water and figs.

X. Q. 264. When did you first commence advertising that you used senna in your preparation?

A. In 1886 or 1887.

X. Q. 265. In an advertisement which you had prior to this one that we are speaking of, did you make a statement that the preparation "presents in the most elegant form the laxative and nutritious juice of the figs of California"?

A. That was copied from a package, I think.

X. Q. 266. Yes, the quotation which I read is copied from your label which you formerly used, and I ask you if you had that statement in your advertisements in medical journals?

A. I don't remember of using that form of words in any medical journals.

X. Q. 267. Did you use that in advertisements in any other journals or papers?

A. Not as a general thing, although we may at times have published a cut of the front of the package, a facsimile of the front of the package on which those words appear. We may possibly have used that in some other advertisement, but not as a general or regular thing.

X. Q. 268. You had a suit over this trademark with Frederick Stearns & Co., did you not? A. We did.

X. Q. 269. In what way have you changed the label since the days of the case with Frederick Stearns?

A. The outside label?

X. Q. 270. Yes.

A. We have rewritten the lower part of the label and omitted the words, "presents in the most elegant form the

laxative and nutritious juice of the figs of California, combined with the medicinal virtues of plants.”

X. Q. 271. You mean you have erased the words which you have just quoted, do you?

A. Written other statements there.

X. Q. 272. Of course, it was not a fact that the medicine did present in the most elegant form the laxative and nutritious juice of the figs of California, was it?

A. It presented a small quantity.

X. Q. 273. Why did you erase those words from the label?

A. My attorney said that the statement should be made so plain that nobody could possibly misunderstand me that the medicinal virtues were appertaining to the plants, and I endeavored to do so. I submitted the revised copy to him, and he said it was satisfactory, and I made the change.

X. Q. 274. You made that change after the decision in the case of Frederick Stearns, did you not?

A. We did.

X. Q. 275. Now, in regard to the large number of sales that you have spoken of, I will ask you about what were the sales in the year 1880, in round numbers, if you remember?

A. 1880, before the incorporation of complainant?

X. Q. 276. Yes.

A. I don't remember, but I should think not more than two hundred dollars or three hundred dollars.

X. Q. 277. About what were the sales in 1881?

A. I don't remember positively, but I should say not more than that.

X. Q. 278. About what were they the first year of the incorporation of the company?

A. 1882. I think the sales were somewhere in the neighborhood of five thousand dollars or six thousand dollars, if I remember rightly.

X. Q. 279. About what were they in 1883?

A. I think not more than three thousand dollars or four thousand dollars in 1883.

X. Q. 280. And what in 1884?

A. I don't know positively, but I should think possibly three thousand dollars or four thousand dollars or five thousand dollars.

X. Q. 281. What were they the year after that?

A. To the best of my recollection the amount in 1885 was somewhere in the neighborhood of ten thousand dollars or twelve thousand dollars.

X. Q. 282. How about 1886?

A. I think in 1886 the sales ran up over twenty thousand dollars.

X. Q. 283. How in 1887?

A. I think the sales ran up—I don't remember positively. I think the sales were forty thousand dollars or fifty thousand dollars in 1887.

X. Q. 284. How about the year after that?

A. To the best of my recollection they jumped up to nearly one hundred thousand dollars.

X. Q. 285. And in 1888?

A. I am now stating without remembering distinctly, but our increase was very large from 1886 to about 1892, the increase each year—I think somewhere in the neigh-

borhood of one hundred and sixty thousand dollars to one hundred and seventy thousand dollars, in 1888.

X. Q. 286. About what had they increased to up to the year 1892?

A. I think that they had increased during that time from fifty to one hundred per cent per annum; some years I think they doubled, and some years perhaps not quite double.

X. Q. 287. Well, say in 1893, for instance; about what was the extent of the sales?

A. I think in 1893 the sales ran up to five hundred thousand dollars or six hundred thousand dollars. The net wholesale prices.

X. Q. 288. Now, you have also spoken of the large amount spent by your company in advertising, and I notice on page twenty-five of the printed transcript of the record in the Frederick Stearns' case that you testified that about the year 1886 you were spending more than twelve thousand dollars in advertising, and in 1887 you spent more than twenty-five thousand dollars in advertising, and in 1888 you spent more than forty-five thousand dollars in advertising, and in 1889 more than one hundred thousand dollars and in the year 1890 more than one hundred thousand dollars, and in 1891 more than two hundred thousand dollars, and in 1892, at the rate at which you had been advertising from the first of the year, you would spend more than two hundred thousand dollars, and that it was safe to say that you had spent altogether in advertising more than five hundred thousand dollars up to the middle of the year 1892. I presume that is substantially correct, is it not?

A. Yes, sir; I was on the safe side of the amounts expended.

X. Q. 289. Now, you also spoke of the earnings of the company being one million dollars. By that I presume you mean that is about the figure at about the present time?

A. I said five per cent on one million dollars for some years past.

X. Q. 290. You said that the earnings were five per cent on one million dollars?

A. Yes, the net earnings were a little more than five per cent of one million dollars.

X. Q. 291. You have produced here a bottle of medicine marked Exhibit "B," attached to the bill of complaint, which you said you bought from the drugstore in this city and county, called the Hayes Street Pharmacy, I believe. Is that correct?

A. I think that is the package I bought from the Hayes Street Pharmacy. Yes, that is correct.

X. Q. 292. And you say that was about May 10, 1897, was it? A. It was.

X. Q. 293. Did you buy this medicine for use?

A. No, I simply bought it to see what he was selling.

X. Q. 294. I presume that you had heard that he was selling "Syrup of Figs," had you not, and you went in there to see?

A. Passing by his store I thought I saw some of it in a window, a show-window, if I remember rightly, and I went in to buy a bottle.

X. Q. 295. As I understand it, you simply went in and asked him for a bottle of "Syrup of Figs," did you?



A. I did.

X. Q. 296. A young man behind the counter asked you if you wanted a twenty-five cent or a thirty-five cent bottle? A. He did.

X. Q. 297. What did you say to him?

A. I said: "Let me see them."

X. Q. 298. Then did he take down and show you the two sizes of bottles?

A. He only took down one size, and, as he did so, I said: "What is the difference between them"? He answered: "Made by different companies." I said, pointing to the bottle which he had in his hand: "Who made that"? He said: "The San Diego Fig Syrup Co."

X. Q. 299. Did you ask him who made the other?

A. I did not.

X. Q. 300. Was the other your article?

A. It was.

X. Q. 301. So he had the two articles there, did he?

A. He did.

X. Q. 302. You selected this one which is marked Exhibit "D," and bought it from him, and paid him for it, and brought it away, did you? A. I did.

X. Q. 303. What did you pay him for this one?

A. Twenty-five cents.

X. Q. 304. I presume you afterward turned it over to your attorney to be used as evidence in this case, did you not? A. I did.

X. Q. 305. Did you buy it for that purpose?

A. Yes, sir.

X. Q. 306. I understand you were trying to find out the

persons who were infringing your right as contended for by you? That is a fact, is it not?      A. Yes, sir.

X. Q. 307. And you bought it therefore with the intention of exhibiting it as a piece of evidence in the case to prove your assertions? Is that correct?

A. Yes, sir.

X. Q. 308. You didn't buy it for the purpose of taking it as a medicine yourself, did you?      A. I did not.

X. Q. 309. Would that testimony apply to all these other bottles that you have testified to, one of which I believe is marked "Exhibit "E," and another Exhibit "G," and another Exhibit "F?" Would the same testimony apply to this also?      A. It would.

X. Q. 310. You bought all three of these from different persons, did you not, different stores?      A. Yes, sir.

X. Q. 311. Now, here is Exhibit "E," for instance. I believe you say you bought that on May 7, 1897, from the Fairmount Pharmacy, did you not?      A. I did.

X. Q. 312. You went in there as in the other case, I presume, and asked for a bottle of "Syrup of Figs," did you?      A. I did.

X. Q. 313. Did the man bring out that bottle for you then?

A. He brought out that bottle while standing behind the counter without showing it to me, and said: "I have the 'Fig Syrup Co.'" And I said: "All right; give me the bottle." So he went and wrapped it up and handed it to me, and I paid him for it.

X. Q. 314. How much did you pay him for it?

A. Twenty-five cents.

X. Q. 315. You then took that to your counsel and handed it to him, turned it over to him, for evidence in this case, did you?      A. I did.

X. Q. 316. Did he show you any other fig syrup besides this?      A. He did not.

X. Q. 317. Did you see any other fig syrup in the store besides this?      A. I did not.

X. Q. 318. You didn't buy that with the intention of taking it yourself as medicine, did you?

A. I did not.

X. Q. 319. Now, here is Exhibit "F," which you have produced; I believe you stated that you bought that from a drugstore at the corner of Kearny and Sacramento streets, did you?

A. I did. I bought this at the drugstore at the southeast corner of Kearny and Sacramento.

X. Q. 320. Whose drugstore was that?

A. It had the name Lucius Little, proprietor, on the window, and above that appeared the sign, "Schmidt's Pharmacy."

X. Q. 321. Did you see Lucius Little?

A. I did not.

X. Q. 322. You don't know him now by sight, do you?

A. I do not.

X. Q. 323. Do you know the proprietor of those drugstores, The Fairmount Pharmacy and the Hayes Street Pharmacy? Were you acquainted with the proprietors of those drugstores? Do you know them to be the proprietors?

A. Only by the statements of the proprietors themselves and of the clerks. The clerk introduced me to Mr.

Bright as the proprietor of the store, but I didn't know the clerk any better than I did Mr. Bright.

X. Q. 324. Now, when you went in to get this Exhibit "F" at the store with the name of Lucius Little over it, I presumed you followed the same course there, and asked for a bottle of "Fig Syrup," did you? A. I did.

X. Q. 325. And the party behind the counter brought out this package and gave it to you, did he?

A. He did.

X. Q. 326. You bought it from him? A. I did.

X. Q. 327. What did you give him for it?

A. Twenty-five cents.

X. Q. 328. You turned that over to your counsel, I presumed, the same as you had done the others, did you?

A. I did.

X. Q. 329. And it was bought for the same purpose as the others, was it? A. Yes, sir.

X. Q. 330. Now, here is another one marked Exhibit "G," which you said you bought from the Ariel Pharmacy on May 11, 1897. I presume the same kind of transaction occurred with reference to that as with reference to the other that you testified to, did it? A. Yes, sir.

X. Q. 331. How much did you pay for this one?

A. Twenty-five cents.

X. Q. 332. Did you turn it over to your counsel?

A. I did.

X. Q. 333. To be used as evidence in this case?

A. I did.

X. Q. 334. Were you acquainted with the proprietor of that drugstore? A. I was not.

X. Q. 335. Are you acquainted with him now?

A. Only by his own statement.

X. Q. 336. (By Mr. ROWE.)—Mr. Queen, Mr. Alt was one of the incorporators of this complainant company?

A. He was.

X. Q. 337. Was he a druggist?

A. No, he was not.

X. Q. 338. Was he a chemist? A. No.

X. Q. 339. Did he have any technical knowledge at all of chemistry or pharmacy? A. I think not.

X. Q. 340. You entrusted to him the manufacture of this preparation, did you? A. I did, for a time.

X. Q. 341. Could anybody manufacture it without any technical knowledge of pharmacy?

A. After being taught.

X. Q. 342. You found it difficult, rather, to answer, Mr. Queen, before recess, as to whether a party going into a drugstore and buying a bottle of "Syrup of Figs," and not knowing that the active principle, the medicinal agent, was senna; would he or not be deceived, Mr. Miller asked you. You thought a man a fool who would go in and make that purchase and think that he was getting the juice of figs, a fruit syrup, and that it would be a laxative; that he could not believe it a laxative; you said that he might be mistaken, but he could not be deceived.

A. I said that it would be simply ignorance of the fact. I didn't say that he would be a fool.

X. Q. 343. I thought you said a man would be a fool who believed that? A. No.

X. Q. 344. You said that you stated to Mr. Alt that fig juice was not medicinal, did you? A. Yes.

X. Q. 345. Why did you find it necessary to impress him with that statement that the figs used in that compound were not a medicinal agent at all? Did he not know that?

A. I don't know. I was explaining to him the properties and nature of the different articles used, and the ways of using them. I told him why we used it.

X. Q. 346. Did you meet Mr. Bishop before 1881?

A. Yes; I knew him as far back as 1876 or 1877, I think.

X. Q. 347. Did you know him when you first invented the formula for this preparation? A. I did.

X. Q. 348. Did you have any conversation with him about the time you invented this formula?

A. I did.

X. Q. 349. Were any business propositions discussed between you two about that time?

A. Shortly afterward, during the year 1879.

X. Q. 350. Had you, at the time that you met Mr. Bishop and discussed this matter with him, had you then selected the name "Syrup of Figs" as a designation for your medicine? A. I had.

X. Q. 357. Did you ever at any time discuss with Mr. Bishop the advisability of continuing the use of this name, and the reasons why it would be a good name to characterize or designate your medicine?

A. I think we may have had some conversation on the subject. I didn't consult him as an adviser or as a responsible party to decide for me what to do. I may have simply told him that I was using the name in a fanciful sense, that the active ingredient was senna, that the figs



were not an active ingredient, that I was simply using it as a trade name.

X. Q. 352. You are certain, however, that you never did discuss with Mr. Bishop the fact that because there was a popular impression existing as to the laxative property of figs, that therefore the term "Fig Syrup" would be a good name to select and preserve, as it would commend itself to the public for that reason?

A. I didn't so speak to him in the sense of deceiving the public. I may have stated to him that while figs are used as a laxative food by the public, and while they are not the active ingredient of this preparation, yet I think it is a good name, pleasantly suggestive, for a medicinal compound. I don't remember the exact language of the conversation, but I know that I did not make to him any deliberate false statement.

X. Q. 353. (By Mr. MILLER.)—Speaking of the extent of your business, I will ask you where is your manufactory for manufacturing this medicine?

A. We manufacture in this city for the Pacific Coast, and manufacture at Louisville, Kentucky, for other territory east of the Rocky Mountains.

X. Q. 354. Is it a large or a small manufactory that you have here?      A. Here in this place?

X. Q. 355. Yes.

A. Well, it is a pretty good-sized house. It is about fifty by one hundred and twenty feet, two stories high, and basement.

X. Q. 356. How many men do you employ in the manufactory?

A. Do you mean in the manufactory, including bottling, wrapping and labeling, and so forth?

X. Q. 357. Yes.

A. We employ from six to eight, according to the way business is; whether it is a good season or a quiet season.

X. Q. 358. How many do you employ exclusively in the manufacture of the article, without regard to bottling, labeling and handling, simply in the manufacture?

A. Two.

X. Q. 359. What are their duties generally?

A. Well, principally to manufacture.

X. Q. 360. They mix the ingredients together, do they?

A. Yes, sir.

X. Q. 361. Do they do that out at your factory here?

A. They do.

X. Q. 362. How long have they been so employed?

A. Ever since about 1886; that is, the one who has charge of it; I think he has been employed there ever since about 1886.

X. Q. 363. Which one is that you refer to now?

A. I refer to a brother of mine.

X. Q. 364. He is the one who testified, I believed, in one of these other cases, is he not?

A. I don't remember of his giving testimony in any other case?

X. Q. 365. Did he not make an affidavit in the Improved Fig Syrup case?

A. I don't remember of his doing so, although it is possible that he may have done so.

X. Q. 366. How long has he been connected with the medicine? A. My brother? Since 1886.

X. Q. 367. Who is the other man that you refer to?

A. A man named McElvany.

X. Q. 368. How long has he been connected with it?

A. He has been in our employ, I think, since about 1878, and he is now assisting my brother in the work of manufacturing; I don't remember how long, but I think two or three years, perhaps maybe a little longer.

X. Q. 369. What is his name? A. McElvany.

X. Q. 370. What is his first name?

A. John McElvany.

X. Q. 371. You are the president of the complainant corporation?

A. I am not. I am the general manager.

X. Q. 372. I presume, though, you are one of the principal owners in it? A. I am.

X. Q. 373. Do you own a majority of the stock?

A. I do.

X. Q. 374. And always since its incorporation?

A. No, not continuously since the incorporation, but I afterward bought out some of the other stockholders.

X. Q. 375. Who is the president of it?

A. Thomas E. Haydon, of Reno, Nevada.

X. Q. 376. (By Mr. ROWE.)—Do the figs used in this preparation of yours give it a distinctive taste or flavor?

A. They do not.

X. Q. 377. If you had simply the word "laxative" printed upon your package, would you, by the taste, be able to tell whether the fig entered into it at all?

A. I think not, by the taste.

X. Q. 378. You would not know that figs were employed at all in the preparation?

A. I don't believe I would, simply by the taste. That is, I would not know whether it was figs or some other syrup, just by the taste.

X. Q. 379. Isn't it a fact that the wording "Syrup of Figs" promotes the sale of the article more than the flavor of the fig juice promotes the flavor?

A. I think not. I think that if people thought it was simply a syrup made from figs, that I could not sell it at all. I think that the larger sales are due to the merits of the article and the advertising that we have given it.

#### Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. What are the prices at which you sell your preparation?

A. We sell it to the drug trade at four dollars per dozen, and allow wholesale druggists a discount of ten per cent on that price.

R. Q. 2. What is the retail price of your medicine?

A. The ordinary retail price, outside of some of the large cities where cutting the prices exists, it is fifty cents per bottle. In this city, where there are a number of cut-rate establishments, the price has been reduced to thirty-five cents per bottle.

R. Q. 3. Then, when this man asked you if you wanted a twenty-five or thirty-five cent bottle, what did you understand that he referred to by the thirty-five cent bottle?

A. I presumed he meant our preparation.

R. Q. 4. That is what you understood?

A. Yes, sir.

R. Q. 5. Have you made any inquiries to ascertain who the owners are of these respective pharmacies that you visited?

A. I have. I have made inquiries through the commercial agencies of the country.

R. Q. 6. And have you, upon such inquiries, found out the defendants here?

A. I was so informed, with the exception possibly of the case of Lucius Little, when I understood that his wife also claimed an interest in the business.

#### Recross-Examination.

(By Mr. MILLER.)

R. X. 1. Is it not a fact that the house of Frederick Stearns & Co. is on the market, and is selling now their compound called "Syrup of Figs" ?

A. I don't know, of my own personal knowledge. I presume it is a fact, however.

R. X. 2. You brought suit against them for the purpose of preventing them from so doing, did you not?

A. Yes, sir.

R. X. 3. And you were not successful in that suit, were you?      A. I was not.

#### Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. Do you know whether or not they have kept, continued to keep, their article in the market?

A. I think they are still selling, although I have not any personal knowledge of the fact.

(Further hearing adjourned to Friday, October 14, 1898, at 10 A. M., on which day the recross-examination of R. E. Queen was resumed, and, by request of respective counsel, is inserted in the record at this point.)

### Recross-Examination.

(By Mr. MILLER.)

R. X. 1. Mr. Queen, has there been any change in your formula for making the syrup of figs since the year 1892?

A. There has not.

R. X. 2. When was the time that you made the change in your formula?

A. Early in 1886 I made a slight change in the proportions, but the composition has been the same since 1884 down to the present time.

R. X. 3. You did not change any of the ingredients? You simply changed the proportions?

A. Made a slight change in the proportion. I don't think there was any substantial change.

R. X. 4. With that exception, the formula is substantially the same now as when you finally perfected it at Reno?

A. No, I didn't perfect it until after coming to San Francisco. After coming to San Francisco I made an improvement, changes in that respect, that I added other ingredients which had not hitherto been used, and omitted some which had previously been used.



R. X. 5. Well, after arriving at that state of the formula, then the only change that you made was this slight change in the proportion that you referred to, in 1888?

A. Excepting that some improvement in the details of the process of manufacturing was made.

Wednesday, October 12, 1898, 10 A. M.

Counsel appearing:

For complainant, Warren Olney, Esq.

For respondents, John H. Miller, Esq., and Purcell Rowe, Esq.

Examination in Chief of

A. P. WOODWARD, M. D., a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your full name?

A. A. P. Woodward.

Q. 2. What is your business?

A. Physician. Some say physician and surgeon, but I always claim that the name physician includes that of surgeon.

Q. 3. Are you a graduate of any medical college or university?

A. The Bellevue Hospital Medical College, New York city.

Q. 4. How long have you been practicing your profession? A. Between twelve and thirteen years.

Q. 5. How long have you been in this city?

A. About nine years.

Q. 6. Do you occupy any official position in your profession in this city?      A. Yes, sir.

Q. 7. What is it?

A. President of the San Francisco County Medical Society.

Q. 8. Are you acquainted with the preparation known as "Syrup of Figs" or "Fig Syrup" ?      A. Yes, sir.

Q. 9. I refer to the preparation put up by the California Fig Syrup Co., of which Mr. R. E. Queen is the manager.

A. Yes, I know the place very well. I think it is 330 Hayes street, or something like that.

Q. 10. You are acquainted with the preparation?

A. Yes, sir.

Q. 11. How long have you been acquainted with it?

A. I am not sure of the exact time, but I think it is at least seven or eight years.

Q. 12. Have you been informed as to the principal active ingredient of the composition? And if so, how long have you been informed what it is?

A. Well, I have always understood that the principal active ingredient in it is senna or some extract of senna.

Q. 13. How long have you had that opinion?

A. Well, perhaps nearly the whole time that I have known of the preparation, seven or eight years.

Q. 14. What can you say as to its being a beneficial or injurious composition for the human system?

A. I don't think it is injurious at all. I have known a great many patients to use it, and generally it is very efficient and very mild laxative or cathartic when taken

in not too large doses; but you will find patients that it does not agree with, the same as you will with any other cathartic medicine.

Q. 15. Have you prescribed it in your practice?

A. Yes, sir; my patients have used it; and sometimes when they have told me that they have been in the habit of using it, instead of my prescribing for them, as they are already using it, why I say, "All right; go ahead and use it."

Q. 16. Have you prescribed it before your patients have used it? That is, have you prescribed it to those who have not used it?

A. I don't think I have ever given a written prescription for it, but then I have told them to get it, just the same as I have told them to get some other medicines, Hunyadi Water or Apenta Water, at the drugstore.

Q. 17. By what name is this preparation known among physicians?

A. Well, it is generally spoken of as "Syrup of Figs." That is not the official title, but then that is the way they generally express it. I believe the exact title is the "California Fig Syrup." I don't think I know exactly what the title is.

Q. 18. "Syrup of Figs" is the name given to it by the complainant. Have you known, or do you know of any other composition on the market known by the name of "Syrup of Figs," except this preparation of complainant's?

A. I don't know of any other preparation, excepting that I saw, perhaps a year ago or something of that sort, a preparation on the market called "Syrup of Figs," or

something bearing that title, similar to that, I think, in the show-window of the drugstore at Hyde and California, and I saw at the time that it was not what I had always known as the "Syrup of Fig" manufactured by this company, down on Hayes street. I don't think I have ever heard anything about it since.

Q. 19. With that exception, you don't know of any other composition that is known by that name?

A. No.

Q. 20. In prescribing the medicine or in referring to it in conversation with your patients, what name do you give to it?

A. "Syrup of Figs" or possibly "Fig Syrup"; most likely "Syrup of Figs."

Q. 21. Do you know of a doctor, Joseph N. Matthews, by reputation?      A. Yes, sir.

Q. 22. What position does he occupy at the present time?

(Objected to unless the witness states that he knows of his own knowledge what position he occupies.)

A. Well, I was not present at the society meeting when he was elected, but, of course, I take a journal, and in a general way I know it through that, the same as physicians read and know positions held by other physicians at a distance. I don't know what lawyers would say about that. I didn't see him or hear him elected at the time, of course. But I am as morally certain of it as if I had been there.

Q. 23. I ask you what position he occupies?

A. President of the American Medical Association.

Mr. MILLER.—I move to strike out the answer of the

witness on the ground that it is hearsay and not of his own knowledge; that it is utterly impossible for him to swear to evidence of that kind.

Q. 24. (By Mr. OLNEY.)—You have stated your source of knowledge, have you, doctor, that he occupies that position?

A. Yes, sir; the most reliable source is the—"Journal of the American Medical Association," is the name of it. It is published in Chicago.

Q. 25. Has that association an official organ?

A. Yes, that is the official organ.

Q. 26. That paper that you have referred to?

A. Yes, sir.

Q. 27. Do you know a book published by Dr. Matthews, entitled "Diseases of the Rectum"?

Mr. MILLER.—We object to that as incompetent, irrelevant and immaterial. We have nothing to do with any medical books in this case, this being purely a question for the alleged infringement of a trademark; and we do not propose to be sidetracked into any issue as to any medical book or medical terms or things of that sort. We shall move to strike out all the testimony that shall be given by this witness concerning this medical book or any medical matters. And I make further objection that it is immaterial whether this witness knows about what the book is, as his knowledge is not in issue here.

A. Yes, sir.

Q. (By OLNEY.)—What is the standing of that publication in the medical profession?

Mr. MILLER.—The same objection; and I shall move to strike out the answer of the witness just given.

A. I think the standing of the book is very good; one of the best works on diseases of the rectum; perhaps the best published in the United States.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. Do you know this Dr. Matthews, personally?

A. No, sir; I have never met him.

X. Q. 2. Did you ever see him in your life?

A. Not that I know of.

X. Q. 3. You had no intercourse with him, had you?

A. No, sir.

X. Q. 4. Were you personally present at the occasion when he was elected president of this society that you have testified to?      A. No, sir.

X. Q. 5. Your sole basis for your oath then, is what you have heard concerning him, is it?

A. My sole basis for my oath? I don't exactly understand that.

X. Q. 6. You have testified, as I understand, that he is president of this Medical Association. I now ask you if your sole basis of your oath is what you have heard and read concerning it?

A. What I have read in the official organ of the association.

X. Q. 7. Do you swear now, as a fact, on your oath, that he is the president of that association?

A. I swear that I believe it to be a fact.

X. Q. 8. Is that the extent that your testimony will go? Does it go any further than that?



A. In connection with that point.

X. Q. 9. Are you in the habit of going into Court and swearing positively to facts, when the only basis of your statement is what you have heard and read concerning matters?

A. I am not in the habit of going into Court very often, but in a case like that where the fact is continually and repeatedly published in medical journals, I think it is a fact, and I simply state it as a fact in that connection. I don't swear that it is, but I swear that I believe it is a fact.

X. Q. 10. Do you believe everything you read in the medical journals?

A. No; I don't believe everything I read in the medical journals.

X. Q. 11. You pick out those particular things that you want to believe, do you, and others that you don't care to believe you don't believe. That is about the way of it, is it?

A. Not at all.

X. Q. 12. Have you any reason for believing this any further than other statements are made in that journal?

A. No more reason than for the majority of statements that are in that journal. I think they are much more reliable than ordinary newspaper reports, but I think that even medical journals might have errors in them sometimes.

X. Q. 13. Then the only thing you know about this Dr. Matthews being president of that association is that you have read the statement in that medical journal?

A. Of course, I have heard other physicians say so,

but I think the more reliable authority, perhaps, would be this journal.

X. Q. 14. And that is the basis of your statement and the only basis of it, is it?

A. That is what I claim, that the "Journal" is the only basis. I don't take what I might call hearsay evidence of physicians.

X. Q. 15. You take the evidence of the "Journal," do you?

A. Yes, sir; because it is the official organ. It is recognized as the official organ of the association.

X. Q. 16. Did you ever write a prescription for this "Syrup of Figs" for anybody?

A. I don't think I ever did.

X. Q. 17. When you give prescriptions you are in the habit of writing them, are you?

A. When I give prescriptions of course I have to write them before I give them.

X. Q. 18. That is a practice among physicians, is it not? A. Yes, sir.

X. Q. 19. Now, I understand you to say that some of your patients had been using this medicine before you attended them, and that you told them to continue. Is that so? A. Yes, sir.

X. Q. 20. That is about the extent to which you have recommended its use, is it?

A. I also stated, I think, immediately afterward, that I had sometimes told patients to go to a drugstore and get "Syrup of Figs," just the same as I have told them to get "Apenta" water or "Hunyadi" water or some other laxative medicine. Instead of writing a prescription, I

have told them sometimes to go to a drugstore and get those things.

X. Q. 21. You have been in the habit of prescribing that way for other proprietary medicines, have you?

A. Very often; like any physician, I am inclined to break over the bounds sometimes.

X. Q. 22. The only way in which you recommend it, then, is in the same way in which you recommend other standard productions, such as "Hunyadi" water, or licorice powders, or something of that kind, is it?

A. I think you might say that is the only way I recommended it; because, with some people, of course, it will agree perhaps, better than "Hunyadi" water, or "Apenta" water. You can't find any one remedy that will agree equally with everyone.

X. Q. 23. You don't always prescribe the same purgative for all your patients, do you?

A. I believe not

X. Q. 24. One purgative will agree with one and disagree with another, will it not?

A. It sometimes happens, or, at least, many times, that a patient thinks it disagrees with him when it is not the fault of the medicine.

X. Q. 25. Then this "Syrup of Figs" would be a good purgative for some people and not for others, would it?

A. That might be so.

X. Q. 26. Did you ever take any of it yourself?

A. No, sir.

X. Q. 27. Did you ever analyze it? A. No, sir.

X. Q. 28. Do you know what it is composed of?

A. No, sir; only from general reports.

X. Q. 29. What does its name indicate that it is composed of, or that it has got in it as its principal ingredient?

A. Well, perhaps one might think from the name that the principal ingredient is some preparation of figs, but I have always understood that the active ingredient is some form of senna, extract of senna.

X. Q. 30. You understand that the active ingredient of it is senna by virtue of the fact that you are a physician, do you not?

A. No, from hearsay, what I have been told. I think the first I was told by some one who was employed in the manufacture of it at Hayes street.

X. Q. 31. Have you been out to the manufactory of it there?

A. I have been in the store there in the building; yes.

X. Q. 32. What was the occasion of your going there?

A. To see two of the employés there.

X. Q. 33. Have you been acquainted with Mr. Queen for some time?

A. No, I never met Mr. Queen, I think, until yesterday evening.

X. Q. 34. You are acquainted with some of the employés out there, are you?

A. Yes, sir; I know some of them for several years.

X. Q. 35. And you went out there to see them, did you? A. Yes, sir.

X. Q. 36. Now, is it not a popular impression among people in general that figs have some kind of laxative property?

Mr. OLNEY.—We object to that as immaterial and irrelevant and not cross-examination, and will insist upon

the objection when the deposition of the witness comes to be read in Court.

A. Well, people often take figs with the idea that the skins and seeds, and so forth, have some stimulating effect upon the bowels—laxative effect—mechanical effect, you might call it.

X. Q. 37. How long have you known of such a popular impression as that?

(Objected to as incompetent, irrelevant and immaterial and not cross-examination, and as the question assumes that the witness has known of such a popular impression.)

Mr. MILLER.—I certainly assume, because the witness has already testified that he did know it as well as everybody else that he ever heard speak of it.

A. Well, I am not sure about that. Possibly for twenty years they would eat figs the same as they would eat prunes, or things of that sort, as a laxative food, you might say.

X. Q. 38. Prunes also are known as a laxative food, are they not?           A. Yes, sir.

X. Q. 39. When did you see the first bottle of this medicine, labeled "Syrup of Figs"?

A. Well, I am not positive. It must have been nearly nine years ago.

X. Q. 40. Do you remember when you saw it?

A. No, here in San Francisco somewhere.

X. Q. 41. Did you know anything about it before you saw it, on that occasion?

A. I think I might have heard of it, but I would not swear to it.

X. Q. 42. You didn't know what the ingredients were, did you?

A. Perhaps not at that time; I don't remember exactly. In fact, I never heard, of course, of all the ingredients in it, but, as I say, I have always understood the active ingredients is some preparation of senna.

X. Q. 43. I am only speaking now of the occasion when you saw the first bottle of it.

A. Well, that is a long time ago, and I have not any very definite recollection as to the bottles.

X. Q. 44. You didn't know at that time what the special ingredients were, did you?

A. I don't know whether I had heard previous to that time that the active ingredient was senna or not. I would not say—I could not say.

X. Q. 45. Now, when you saw that first bottle of medicine labeled in large letters "Syrup of Figs," did it convey any impression to your mind as to any constituent that there might be in it? And, if so, what was it?

(Objected to as immaterial and irrelevant and not cross-examination.)

A. Well, of course, I might have supposed that there was some preparation of figs in it.

X. Q. 46. Why would you suppose that?

(The same objection.)

A. Because the name was mentioned, "Syrup of Figs."

X. Q. 47. Did you notice on those labels a picture of a young lady gathering figs from a figtree?

(The same objection.)

A. I don't remember it.



X. Q. 48. Will you please look at the complainant's exhibit that has been put in evidence here, marked "A," and state if you recognize that as the label of the medicine that you have been referring to?

A. As well as I remember, that is the label.

X. Q. 49. Do you observe on the two ends of the label pictures of a woman gathering figs, and also on the face of the label the picture of a branch of a figtree, containing figs on it, enclosed within a circle?

(Objected to as immaterial and irrelevant, and not cross-examination.)

A. Well, I see these figures on the end, but I don't think they represent a lady gathering figs. I should be in doubt about it. She has a branch of a figtree, holding in her hand, with some figs, I think, on the branch.

X. Q. 50. Now, if an ordinary person should go into a store to buy a bottle of medicine and didn't know what its constituents were, what effect would those pictures in your judgment have upon his mind in determining as to what was the constituent, or what were the constituents of the medicine? Would it, in other words, have any effect upon his mind in inducing him to suppose that any concoction of the fig entered into that medicine?

(Objected to as incompetent, irrelevant and immaterial, and not cross-examination, and as calling for an opinion of the witness upon a matter that the Court is just as well able to determine as the witness; and that it does not relate to a question of fact.)

A. He might have the impression that there was some preparation of figs in it. He may have been in-

formed previously, however, that there was not preparation of figs in it.

Mr. OLNEY—I move to strike out the answer as not competent evidence.

X. Q. 51. (By Mr. MILLER.)—I am taking the case of an ordinary person who wants a laxative medicine, who goes into the drugstore, and he sees this bottle that you have in your hand. It is reputed to be a laxative. Now, would not the natural impression produced on his mind be that that medicine contained figs in some form or other as a laxative?

(Objected to upon the same grounds stated to the previous question, that it is incompetent, irrelevant and immaterial, and not cross-examination, and that it is calling for an opinion of the witness about a matter upon which he is not shown to be qualified to testify; and, further, that it calls for an opinion of the witness upon a matter that is for the Court to determine from an inspection of the package or paper.)

A. I think an entire stranger to the preparation, if he would just see the name on the label, would naturally suppose that there was some preparation of figs in it.

X. Q. 52. Would not those pictures tend to carry out that impression also, or assist in it?

Mr. OLNEY.—I give notice that I shall move to strike out the answer of the witness to the question.

A. I think they would.

X. Q. 53. (By Mr. MILLER.)—Now, isn't it a fact, doctor, and does not everybody know it throughout the country where these medicines are sold, that those pictures put on there, representing figs, with the name

“Syrup of Figs”—that they were put on there for the purpose of inducing people who purchase the article to suppose that there was some preparation, contained in the article made from the fig? Don’t everybody know that?

(Objected to as incompetent, irrelevant and immaterial, and not cross-examination, and on the further ground that it asks the witness to state a fact, which is impossible for him to know, namely, that people know that that was put on there for the purpose of deceiving people, and on the further ground that it is calling for an opinion of the witness in a matter not competent to be proved by expert testimony; that he cannot give the opinion or sentiments of other people, or their knowledge, or what they suppose.)

A. Of course, I don’t know anything about why it was put on there. I don’t know of my own knowledge, and, in fact, I think that I never heard anybody say.

X. Q. 54. Do you know whether there are any figs in that medicine or not?

A. No, I do not, except from hearsay, but I have heard. I have an impression that there is not any figs in it. It may be hearsay.

X. Q. 55. Where did you hear that?

(Objected to as incompetent and not cross-examination.)

A. Here in San Francisco.

X. Q. 56. Did you hear it from any of these employes in the complainant’s factory on Hayes street?

(The same objection.)

A. I don’t know whether I ever heard them say so or not.

X. Q. 57. Would you consider it dealing honestly with the public for a manufacturer to sell medicine, labeled as syrup of figs, and containing pictures on it of figs, thereby inducing the public to buy it under the impression that it contained figs, when it had no figs in it?

(Objected to as not proper cross-examination, and as an attempt to induce the witness to usurp the functions of the Court.)

Mr. MILLER.—I think it is a very proper question, which a medical man, who knows medical ethics, can testify to, and I ask it for that purpose.

A. It is not a question of medical ethics, because medical associations have no control over the matter.

X. Q. 58. Well, as a matter of common honesty, do you think it would be right? You know what common honesty is?

(Objected to as incompetent.)

A. I don't really know that I can pass an opinion about that, because I am not familiar with the tricks of the trade.

X. Q. 59. You know of such things having been done, don't you, though, by manufacturers?

(The same objection; not cross-examination; and as tending to induce the witness to state an opinion which must be formed by the Court, and not by the witness.)

A. As far as general report is concerned, I think it is very common for manufacturers and business houses, and so forth, to make some special advertisements that will catch the public, so to speak.

X. Q. 60. Do you know in medicine of such a substance as syrup of figs?

A. In medicine?

X. Q. 61. Yes, sir.

A. Well, I think not, as a medicinal syrup, recognized in the United States Dispensatory of the United States Pharmacopia.

X. Q. 62. You do know of various syrups made from other fruits, do you not?

A. Yes, sir; there are some.

X. Q. 63. How are they generally made, in a general way?

A. Syrup of orange or syrup of lemon.

X. Q. 64. What is the syrup of orange?

A. Well, it is ordinary syrup, perhaps flavored with orange.

X. Q. 65. It has orange in it, has it?

A. Yes, sir.

X. Q. 66. That gives it its name?

A. Yes, sir; that is the reason why it is called syrup of orange.

X. Q. 67. It is flavored with orange?

A. Yes, sir.

X. Q. 68. The same with the syrup of lemon as to the lemon? A. Yes.

X. Q. 69. That is, it has flavor of lemon in it?

A. Yes, sir.

X. Q. 70. And syrup of strawberry has strawberry also in it?

A. I believe there is such a syrup, but I don't think it is recognized as a medicine, though. Perhaps it is one of the flavorings used at ice-cream stands or soda fountains.

X. Q. 71. In other words, you can make a syrup from any fruit, can't you, by giving the syrup the flavor of that fruit?

A. Yes, I think, of course, it might be called that, but, in medicine or in pharmacy, I don't know that it could be classed as a medicinal syrup.

X. Q. 72. I am speaking about outside of pharmacy, and outside of a technical sense?

A. Yes, I think so. You might call it anything you pleased.

X. Q. 73. You know a syrup of rhubarb, do you not?

A. Yes, sir; there is a syrup of rhubarb.

X. Q. 74. And a syrup of lemons, also?

A. I don't think there is in pharmacy a syrup of lemons. May be there is, but I don't remember it.

X. Q. 75. Do you know a syrup of maple or maple syrup?

A. Well, I have heard of it, but, of course, I have not seen it in any pharmacy as a medicine. It is prepared in Vermont mostly, I believe, as a food.

X. Q. 76. It is a laxative, is it not?

A. It is slightly laxative perhaps, as all syrups, of course, are slightly laxative, but it is not prescribed; it is not recognized as a laxative medicine in the sense of being a laxative medicine.

X. Q. 77. It has the juice of the maple-tree in it, hasn't it?

A. Well, it has, perhaps, the extract of the juice, one of the solid ingredients of the juice.

X. Q. 78. The natural impression evidently on a per-



son is, that it has maple juice of some kind, or extract of maple in it, isn't it?

A. I think so.

X. Q. 79. And the same way with regard to any other syrup that takes its name from any particular fruit, it is supposed that it has that particular fruit in it, isn't it?

A. I think it is the common impression.

X. Q. 81. The basis of the syrup being, I presume, sugar and water? A. Generally; yes, sir.

X. Q. 82. Then, if you add any particular kind of fruit, that gives it the flavor of the fruit, and the syrup is called by the name of that fruit?

A. I suppose, instead of having the basis of the syrup, sugar and water, they could use glucose or saccharine. I don't know how various manufacturers make it. I haven't looked into it. I am not familiar with those details.

X. Q. 83. Now, going back to the question of a moment ago, I will ask you if there is known in pharmacy, technically, any substance as the syrup of figs?

A. I didn't think so. I don't think that is an official syrup.

X. Q. 84. The name "Syrup of Figs" then, would indicate ordinarily the same kind of a syrup, as other fruits, with a change in the name of the fruit, wouldn't it?

A. Yes, you might say that it would indicate that ordinarily. There might be exceptions, as is supposed to be the case with this preparation.

## Examination in Chief of

WINSLOW ANDERSON, M. D., a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your full name?

A. Winslow Anderson.

Q. 2. Your age?

A. Approximately about forty—thirty-nine.

Q. 3. What is your profession?      A. Physician

Q. 4. How long have you been a physician?

A. About fifteen years.

Q. 5. Where have you practiced during that time?

A. San Francisco.

Q. 6. Are you a graduate of any medical college?

A. Yes, sir.

Q. 7. What?

A. The University of California and the Royal College of London.

Q. 8. Have you occupied any position in any medical college or school?      A. Yes, sir.

Q. 9. What?      A. Dean.

Q. 10. Of what school or college?

A. The College of Physicians and Surgeons.

Q. 11. Is that connected with the University of California?      A. No, sir.

Q. 12. Are you acquainted with a preparation, prepared originally by Mr. Queen, and now put upon the market by the California Fig Syrup Co., known as "Syrup of Figs"?      A. Yes, sir.

Q. 13. How long have you been acquainted with it?

A. From six to eight years; perhaps more.

Q. 14. Do you know whether or not it is a beneficial preparation for constipation?      A. Yes, sir.

Q. 15. It is?      A. Yes.

Q. 16. Do you know whether or not it is prescribed by physicians in their practice for patients?

A. It is.

Q. 17. Have you ever prescribed it yourself?

A. I have.

Q. 18. Do you know a book by Dr. Joseph M. Matthews, entitled "Diseases of the Rectum"?

A. I do.

Q. 19. Do you know whether that is a recognized authority amongst physicians in this country?

(Objected to as incompetent, irrelevant and immaterial, on the same ground interposed to the same questions asked of witness Woodward.)

Q. 20. The question is, do you know?

(The same objection.)

A. I do.

Q. 21. What is the authority?

(The same objection.)

A. The best book known on the subject.

Q. 22. In medicine when the term "Syrup of Figs" is used, what is meant by it?

A. This is the only preparation I have known of.

Q. 23. Now, if another doctor should speak to you, or a patient should speak to you about "Syrup of Figs," and in connection with medical matters or diseases, what would you understand was referred to by the speaker?

A. The product of the California Syrup of Figs Co.

Q. 24. Is there any other product on the market of any kind, except that or some imitation of it, known by the name of "Syrup of Figs," to your knowledge?

A. I never saw any other than this, so far as my recollection goes.

Q. 25. Have you seen any advertisements in medical journals in the State, in which is stated that the laxative ingredient of this compound is senna?      A. Yes, sir.

Q. 26. You have seen such?      A. Yes, sir.

Q. 27. How long since?

A. For several years.

Q. 28. Have you or have you not seen those statements as long as you have been acquainted with the article itself?

(Objected to as leading.)

A. Yes, I think as long as I have known anything of this preparation, I have seen it stated that the laxative properties are due to senna.

#### Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. When did you first become acquainted with this medicine?

A. It must have been six or eight years ago, perhaps more.

X. Q. 2. What were the circumstances, under which it was called to your attention?

A. By seeing the printed advertisement of the product in the medical journals.

X. Q. 3. Did you know what it was composed of at that time?

A. It was then said to be composed of senna, flavored with aromatics.

X. Q. 4. Is that all?           A. Yes, as far as I know.

X. Q. 5. You have never analyzed it to know exactly what it is composed of, have you?           A. No.

X. Q. 6. All you know about its constituents is what you have heard in that regard?

A. Or what I have read.

X. Q. 7. I include under that impression what you have read?           A. Yes, sir.

X. Q. 8. And you have read that it is composed of senna and aromatics?

A. Flavored with syrup of figs or fig syrup.

X. Q. 9. Flavored with what?

A. Syrup of figs, with the product of the fig.

X. Q. 10. Where have you read that—that it is flavored with syrup of figs?

A. In the medical journals.

X. Q. 11. In all these papers and in the medical journals referred to?           A. Yes, sir.

X. Q. 12. These were advertisements that were put out by the California Fig Syrup Co., were they?

A. I suppose so.

X. Q. 13. In looking at the label, or rather, the box containing the label, which is now before you, marked marked "Complainant's Exhibit A," do you recognize that as the product that you have been referring to?

A. Yes, sir.

X. Q. 14. You have seen it put up in that style, have you?      A. I have seen it in drugstores.

X. Q. 15. You have seen it in drugstores put up in that style of package, have you?      A. Yes, sir.

X. Q. 16. Do you notice the pictures of the figs on the box?      A. I didn't know all these were figs.

X. Q. 17. Well, look at them now, and see if you can determine whether they are figs or not?

(Objected to as incompetent, irrelevant and immaterial, not cross-examination, calling for the opinion of the witness on a point that the Court itself should form an opinion on.)

A. They look like pears.

X. Q. 18. Do you see the pictures on the ends of the box?      A. Yes.

X. Q. 19. What do they represent?

A. I suppose they represent a fig leaf and a fig.

X. Q. 20. Now, when those pictures, representing figs, and the name "Syrup of Figs" are used in connection with the laxative medicine, would they not carry the impression to the mind that figs enter into the medicine as one of its constituent elements?

(Objected to as incompetent, irrelevant and immaterial, and on the further ground that it is not proper cross-examination, not relating to matters about which the witness was examined in chief; and wholly irrelevant to any issue; calling for an opinion of the witness upon a subject that expert testimony is not required.)

A. I should think so.

X. Q. 21. Is it not a common practice among manufacturers of medicine to give them a name, or very frequently,



to give them a name that will indicate to the public some one or more of the constituents of the medicine, so that the public may understand that the medicine contains that as a constituent?

(The same objection.)

A. I have no experience in these matters of my own knowledge.

X. Q. 22. What are the general constituents of a common, ordinary syrup?

A. Thirty-three per cent sugar and sixty-six per cent water.

X. Q. 23. How do you get the different kinds of syrup?

A. In many instances by using fruit, pure and simple, taking the fruit pure and simple, as in maple syrup. Most frequently, however, these syrups are manufactured from compound ethers, and have nothing to do with the fruit at all.

X. Q. 24. How about syrup of rhubarb, for instance?

A. That is largely composed of rhubarb, with the sugar and water.

X. Q. 25. How as to rhubarb prepared and put into the syrup?

A. I am no pharmacist. I don't know how it is prepared.

X. Q. 26. Now, when you speak of syrup of orange or syrup of lemon, do those terms indicate that they contain those fruits respectively, or some other portion of them?

A. I think not. They are usually made from compound ethers, so far as my experience goes—synthetically.

X. Q. 27. Do you know the syrup of orange?

A. Yes, sir.

X. Q. 28. How is that made?

A. I don't know. My impression is that it may be made by adding compound ethers to ordinary syrup; as well as by the juices of fruit, the product of fruit.

X. Q. 29. Does it not contain the juice of the orange or some portion of the orange?

A. When made from the juice of fruit, yes; when made from compound ethers, no.

X. Q. 30. Do you know how the syrup of raspberry is made? A. I do not.

X. Q. 31. Does not the fruit of raspberry enter into it some way?

A. I could not say. I am not a practical pharmacist. All I know is that they do make these syrups from a chemical standard, by adding chemical products, instead of the fruit itself.

X. Q. 32. The chemical products though, that you refer to, are extracts from fruit, are they not?

A. No, synthetical molecules prepared from extraneous matters.

X. Q. 33. In other words, it is an imitation?

A. Not necessarily an imitation. If water is made from steam, or water is made from ice, the molecules are in the steam and they are in the ice, but in one case they are put in there synthetically, and in the other case they are put in there analytically.

X. Q. 34. Has anything of that kind been done in the preparation that you have referred to?

A. I don't know.

Mr. OLNEY.—I move to strike out all this kind of testimony, on the ground that it is not cross-examination, that it does not relate to anything testified to by the witness in chief.

X. Q. 35. (By Mr. MILLER.)—Is there not a popular impression generally that figs have some kind of a laxative property?

(Objected to as incompetent, irrelevant and immaterial, and not cross-examination; as calling for something that is a matter of opinion.)

A. The skins and seeds are laxative mechanically.

X. Q. 36. I am not speaking of it in the scientific sense, but only in the popular sense, and asking you do not the public generally suppose, or have the impression, that figs have laxative properties; and has not that impression prevailed from the earliest days of history?

A. As far as I am competent to judge of public opinion, I should think yes.

X. Q. 37. Well, I understand you to say, though, as a scientific fact, whatever laxative properties the figs have, is due to mechanical action of the seed and the skins?

A. I believe that to be correct.

X. Q. 38. And that a pure syrup of figs, if such could be made, would not of itself have any laxative properties, would it?

A. Not any more than any other syrup. All syrups are slightly laxative.

X. Q. 39. Yes, I understand that, but what I mean to say, is, it would not be a laxative medicine?

A. No, it would not be given as a laxative medicine.

X. Q. 40. (By Mr. ROWE.)—You have stated that

your first knowledge of this preparation was due to your reading advertisements in medical journals, have you not? Therefore, whenever the words "Syrup of Figs" is used, you think only of the preparation of the California Syrup of Figs Co., and not of the fruit juice?

A. Yes, sir.

X. Q. 41. What would have been your impression, had you never seen the advertisements in the medical journals, if you had heard the term "Syrup of Figs" used?

A. If I had never been acquainted with this preparation, I suppose I should have thought that it was a syrup or product of the figs itself.

X. Q. 42. You state that, in the medical journals, the active principle is stated as senna? A. Yes, sir.

X. Q. 43. That is well known among the profession, is it not? A. Yes, sir.

X. Q. 44. It is because they read such information in the medical journals? A. I suppose so.

X. Q. 45. It is not probable then that the public would have become aware of its constituent elements or ingredients, unless it was stated outside of the medical journals?

(Objected to as incompetent, irrelevant and immaterial, and not cross-examination, and as calling for the opinion of the witness upon a probability.)

A. The public would soon be informed through medical journals, as they are read quite extensively in libraries and hotels, and the dissemination of knowledge through and by the physicians reading these journals.

X. Q. 46. Do you not generally, when you prescribe "Syrup of Figs," tell your patients its ingredients?

A. Yes; I frequently tell them it is a preparation of senna.

X. Q. 47. Have you had occasion to ascertain that the knowledge of your patients differed from your technical knowledge of the ingredients; that they had the impression that senna was not the active ingredient, but that it was due to fruit juice? A. I don't know.

X. Q. 48. You have stated that syrups are frequently made from ether? A. Yes, sir.

X. Q. 49. Is it generally understood, or do you know, can you state of your own knowledge, whether it is generally understood among the people generally, the public, that such is the composition of the majority of syrups; when you speak of the syrup of lemon or the syrup of strawberry, is it popularly understood that these are the product of ether, or that they are formed from fruit?

(Objected to as not cross-examination, and as calling for the opinion of the witness upon a popular belief, about which he was not examined in chief; and as immaterial.)

A. I am not competent to judge.

X. Q. 50. Would you not say, doctor, that such an opinion as that was technical knowledge?

A. Undoubtedly.

#### Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. You stated in answer to a question on cross-examination, that you knew the constituents from reading them in medical journals. I will ask you if, from having prescribed the medicine, and observed or known some-

thing about its operation, whether you came to any conclusion as to its constituents?

A. I think I never used it, until I learned from reading (lately) that its active principle was senna.

R. Q. 2. Then from this use did you—what I want to get at is, what opinion did you come to in regard to its ingredients, from having used it? Did you come to an opinion as to whether that advertisement was correct or not?

A. I have always believed it, and the action of the remedy has indicated it, that it was an aromatic preparation of senna.

#### Examination in Chief of

W. F. MCNUTT, M. D., a witness called on behalf of complainants; sworn.

(By Mr. OLNEY.)

Q. 1. What is your full name?

A. W. F. McNutt.

Q. 2. What is your profession?

A. Physician and surgeon.

Q. 3. How long have you been practicing that profession? A. Thirty years.

Q. 4. How long in this city?

A. Thirty years in this city.

Q. 5. Are you acquainted with the preparation, prepared and put up by the California Fig Syrup Co., known as "Syrup of Figs." or "Fig Syrup," used as a laxative?

A. Yes, sir.



Q. 6. How long have you known that preparation?

A. Oh, I don't know; five or six years, I guess. I could not tell you exactly.

Q. 7. Have you used it at all yourself, either personally, or in your practice?

A. It is often used in my family, yes.

Q. 8. Can you state whether or not its ingredients are beneficial for the purposes claimed?

A. It is a good laxative.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. You say it is a good laxative, doctor. What do you understand to be its constituents?

A. Senna, my understanding is.

X. Q. 2. Senna is an old, standard laxative, isn't it?

A. Yes, a very old laxative, very old.

X. Q. 3. It has been known from time immemorial?

A. Oh, yes, yes.

X. Q. 4. And you understand from some source that this medicine is composed in part of senna?

A. Yes, sir.

X. Q. 5. And for that reason you know it to be a good laxative? A. Yes.

X. Q. 6. Do you know that the other constituents are?

A. I do not know; no.

X. Q. 7. You have never analyzed it? A. No.

X. Q. 8. Where did you, or from what source did you understand that it is composed of senna?

A. Well, I will tell you. If you are going around, go

into a family, and you ask the patient, "How are your bowels"?, and he tells you, and you ask him if he has taken any laxative and he says "Yes, I took Castoria," and I say, "Did it operate well?", and he says "Yes," then perhaps I tell him to take some more of it. And if he says he has used "Syrup of Figs" and I say, "Did it operate well?" he says "Yes," and I say, "Well, take a little more of it."

X. Q. 9. In other words, one laxative works well on one individual and not on others?

A. Yes, I tell them to take a little more of it, if it is necessary.

X. Q. 10. As long as it had been acting all right before you went there, you let well enough alone?

A. Yes, sir.

X. Q. 11. And in that way you prescribe for them to continue taking it? A. Yes.

X. Q. 12. You have never written out any prescription for it, have you?

A. Oh, I never write a prescription for "Castoria" or "Syrup of Figs." They sometimes ask me, "Doctor, I would like to take some kind of a laxative," and I say, "Well, go and get a bottle of 'Syrup of Figs.'" or "Get some 'Castoria,'" or "Get some citrate of magnesia," or some of those preparations.

X. Q. 13. Doctor, you have seen boxes containing labels such as Exhibit "A." have you?

A. I have seen them on the shelves. I have not looked at one. I have seen them in the houses. I have seen them in drugstores, but I never examined the label.

X. Q. 14. You notice the prominent reference to figs on this label, do you not?      A. Yes, sir.

X. Q. 15. Does it carry the impression to your mind as to its constituents?

(Objected to as irrelevant and as improper cross-examination, for the reason that the matter was not called out on examination in chief.)

A. My impression is that it is as with many medicines that are proprietary medicines; that they get a name that will take, a trademark, to protect their product, to do business on.

X. Q. 16. That they would take a popular name, or rather, a name that would appeal to the public fancy?

A. Yes, sir; something of that sort.

X. Q. 17. Can you give any reason why a name, containing the word "figs" in it would appeal to public fancy as a laxative?

(Same objection.)

A. Well, I suppose the same as a man would put a preparation, called the "Syrup of Prunes" on the market, with the idea that some people would think that prune juice was a laxative.

X. Q. 18. In that case the manufacturer would take advantage of the general impression that prunes were a laxative, and, therefore, would call his laxative medicine the "Syrup of Prunes"? Is that your idea of it?

(Objected to as incompetent and irrelevant, and not cross-examination, not relating to matter that has been put in evidence, and assuming facts that the witness knows nothing about.)      A. Yes, sir.

X. Q. 19. Now, doctor, isn't it a fact that there is a

popular impression among people at large that figs are laxative?

(Same objection.)

A. Well, I think that is a general idea; and they are, if you eat the skins and seeds.

X. Q. 20. Then a person who selects as a name for his laxative medicine some word, relating to figs, or which will call up to the mind of the purchaser, figs, in some form or other, would be doing about the same thing that a man would do who called his laxative medicine "Syrup of Prunes," would he not?

(Objected to as incompetent, irrelevant, and not cross-examination, and as calling for the opinion of the witness on a matter that is immaterial.)

A. Yes, sir.

X. Q. 21. Doctor, where did you get your first impression as to the laxative qualities of this "Syrup of Figs" medicine?

A. I expect in the families that I have attended—very likely.

X. Q. 22. That is, they told you that they had taken it and that it had acted as a laxative?

A. Acted very well; and I simply told them if it was a mild laxative and did well with them, just to take it.

X. Q. 23. Well, how did you first know that senna was in it?

A. Well, I don't know. I supposed I inquired, likely. I generally do; if I find medicine in families, inquire about the properties—inquire of the drugstores. We have proprietary medicine all the time, and if I see somebody using it, I inquire. Now, antipyrine and antikam-

nia, and all these things, I inquire in regard to where they are made and what they are used for, and what they are made of.

X. Q. 24. Now, doctor, before you had found out or heard that senna was one of the principal ingredients in this medicine, and if you had then simply seen a bottle of the stuff with this label on it, and labeled "Syrup of Figs," containing the picture of those figs, what impression would have been produced on your mind as to the laxative properties of the medicine?

(Objected to as immaterial and irrelevant, and not proper cross-examination, and as calling for a matter that is not in evidence or in issue—what impression would have been made on his mind.)

A. I would know that it contained the active principle of some ingredient that was not bitter. It is not likely that they would have put up anything that was very disagreeable. I would have thought that it would contain a laxative that was not disagreeable and not drastic.

X. Q. 25. Would you think that syrup of figs was in it, or some product of figs?

A. Oh, I would suppose that perhaps it was flavored with figs or something like that.

X. Q. 26. What do you understand to be the idea, the general idea, intended to be conveyed by the manufacturer of this medicine in putting it forth to the public as a syrup of figs, and in connection with those various pictures of figs? What is the idea intended to be conveyed to the public by the manufacturer in putting it out in that form?

(Objected to as not cross-examination, incompetent, and as calling for the opinion of the witness upon a matter that the Court, if anybody, must determine; and tending to make the witness on the stand usurp the functions of the Court.)

A. Well, I don't know. My idea would be that the manufacturer, if he wanted to manufacture and advertise a laxative, or whatever it was, he would try to get a good name to advertise it by. He would know that there was very little difference what he called his medicine, but, if he did not advertise it, it would not sell. He would commence advertising the name just as we find Ayer's "Cherry Pectoral" advertised, or Ayer's "Wild Cherry." I think they are flavored with hydrocyenic acid, or something of that kind, which gives it a slight cherry flavor.

X. Q. 27. But it has no wild cherry in it, has it?

A. It is not likely.

X. Q. 28. Can you give any reason why the manufacturer would select "Syrup of Figs," as being an appropriate name for a medicine?

(The same objection.)

A. Well, I think there is, perhaps, an impression that figs are a laxative.

X. Q. 29. And yet the medicine might be in the same category as "Cherry Pectoral," which has no wild cherry in it? It might have no figs in it? A. Yes, sir.

X. Q. 30. I presume you don't know, as a matter of fact, whether this medicine has any figs in it or not?

A. No, I don't know.

X. Q. 31. (By Mr. OLNEY.)—I understand you to say you don't know? A. No, I don't know.



X. Q. 32. (By Mr. MILLER.)—If you saw the name “Syrup of Orange” advertised, you would naturally suppose, would you not, that the person intended to convey the idea that there was orange in it in some form?

A. Well, knowing that it is not a laxative, it would not impress me in that way. I would think it was an advertising name or a trademark.

X. Q. 33. But that would be due to your personal knowledge, would it not? A. Yes, sir.

X. Q. 34. A person, not a medical man—just an ordinary, common individual—would not have that same impression, would he?

(Objected to as calling for the opinion of the witness upon a matter that it is impossible for him to know, and as not cross-examination.)

A. I would naturally suppose that he would likely think that there was some orange juice. It would be natural for him to think that there was some orange juice in it, though he would know it was not the orange juice that was the active ingredient, if it was advertised as a laxative medicine—as a cathartic; he would know from his experience in eating oranges that there was some cathartic in it as a laxative medicine.

X. Q. 35. (By Mr. ROWE.)—I would like to repeat that question in another form: I suppose that the first impression you received from that ingredient, when you first saw it named, was that it contained some active cathartic principle?

A. Some laxative principle.

X. Q. 36. Suppose the position had been reversed, and you had been the patient, and your patient had been the

doctor, what would have been the impression upon your mind as a patient, when you first heard the word "syrup of figs," used in connection with a laxative medicine?

(The same objection.)

X. Q. 37. Would there have been some impression upon your mind then that there must have been some active principle, and not the syrup of figs or fruit juice that was the cathartic?

A. Yes, sir; I suppose I would know that a teaspoonful of syrup of figs would not act as a cathartic medicine.

X. Q. 38. We are assuming that you are the patient?

A. Yes, I would know from my own experience, likely, if I knew anything of figs.

X. Q. 39. Suppose you were a resident of the East, where figs are not raised, and that you had had no familiarity with the fruit whatever, except generally, what is popularly understood in regard to it, would you then have that same opinion that a teaspoonful would not be laxative?

(Objected to as not cross-examination, improper, calling for the opinion of the witness upon an impossible state of facts.)

A. Well, you are speaking now of my own opinion, not what the public would think?

X. Q. 40. I am speaking about what you would be as a member of the public, if you were not a physician, and had not your technical knowledge.

A. Well, I think I would have sense enough to know that a fruit which is used as a food would not—a teaspoonful or a tablespoonful of the juice would not act as a cathartic, if I gave it any thought at all.

Examination in Chief of

D. A. HODGEHEAD, M. D., a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your business or occupation?

A. Practicing medicine and surgery.

Q. 2. How long have you been engaged in that practice?      A. For fourteen years; a little over.

Q. 3. Where?

A. Always in California; and for the last nine years in San Francisco.

Q. 4. Are you a graduate of any medical college?

A. Yes, sir.

Q. 5. What college?

A. The Bellevue Hospital Medical College in New York.

Q. 6. Do you occupy any special position in relation to your profession?      A. Yes, I do.

Q. 7. What is it?

A. I hold the chair of Obstetrics and Diseases of Children in the College of Physicians and Surgeons; I am also secretary of the Faculties.

Q. 8. In your practice as a physician, have you become acquainted with the medical preparation put up by the complainant in this case, and known as "Syrup of Figs" or "Fig Syrup"?      A. I have.

Q. 9. How long have you been acquainted with it?

A. I can't answer that positively, but possibly six or eight years.

Q. 10. Have you had occasion to use it in your practice?

A. Yes, sir; I have used it frequently.

Q. 11. Do you know whether or not other physicians use it?

A. Only in a general way. I don't know positively that other physicians use it. I don't think I have had occasion—well, yes, I can say that I have heard others say that they have used it.

Q. 12. Have you made any inquiries to ascertain whether, or made any examinations to ascertain whether, it is a beneficial compound or otherwise?

A. I have my own experience to go by. I have used it, proved the benefit.

Q. 13. Have you been informed as to what its principal laxative qualities come from?

A. Yes, sir; or I have informed myself in whatever way I could. I have always tried to do that in regard to any medicine I see.

Q. 14. You did inform yourself in regard to this?

A. I did.

Q. 15. Do you know of any other compound or preparation of any kind that goes by the name of "Syrup of Figs" except that particular article?

A. No other to my knowledge.

Q. 16. When the term "Syrup of Figs" is used in the profession in any conversation what does it refer to?

(Objected to as incompetent, irrelevant and immaterial, because the medicine is sold to the public at large, and the question should be what impression it conveys to the mind of the public at large, and not to medical men who have a technical training.)

A. It refers to this preparation made by the California Fig Syrup Co., so far as I am informed.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. Well, how far have you been informed on that subject, doctor?

A. I say so far as I am informed. The medicine is mentioned among the profession and it is advertised in the journals and mentioned in the articles written in the journals, and in that way I am informed of the preparation, so far as I am in regard to that or any other preparation.

X. Q. 2. Have you not seen other syrups of figs advertised by other people?

A. I don't remember ever to have seen any other advertised.

X. Q. 3. Don't you know that there is another "Syrup of Figs" manufactured and sold largely in the East?

A. No, I do not.

X. Q. 4. Do you know the firm or have you ever heard of the firm of Frederick Stearns & Co. of Detroit?

A. Yes, I have heard of Frederick Stearns & Co. frequently.

X. Q. 5. Haven't you heard that they manufacture and sell "Syrup of Figs" also?

A. I have never heard it.

X. Q. 6. Then it is because you have never heard of any other "Syrup of Figs" except that of complainant's that you based your recent testimony that, when the term

was used, so far as you were informed, it referred to complainant's? That was the basis of your testimony?

A. I have not heard of any other preparation.

X. Q. 7. When did you first come in contact with this medicine?

A. Well, that I could not say positively; six or eight years ago.

X. Q. 8. Do you remember the circumstances?

A. I do not.

X. Q. 9. I presume you simply know of it in a general way as you do of other proprietary medicines that have been on the market for a number of years?

A. That is the way in which my knowledge to a certain extent is derived.

X. Q. 10. You never analyzed it, did you?

A. No.

X. Q. 11. You don't know of your own knowledge what are the actual constituents, do you?

A. I don't know of my own knowledge what are the actual constituents of any proprietary medicine.

X. Q. 12. Are those things generally kept secret?

A. Not of the proprietary medicines, no. They are generally advertised.

X. Q. 13. Is this a proprietary medicine?

A. I so understand it.

X. Q. 14. Then are not the constituents of this advertised? A. Yes, they are.

X. Q. 15. What are they advertised to be?

A. The active principle is advertised to be senna.

X. Q. 16. Well, that is only one constituent. Do they advertise what the others are?



A. I don't think, as far as my recollection goes, that they do. It says that the main principle is senna flavored with aromatics. It does not state—the only thing that we are concerned in, is the active principle. We do not care whether it is flavored with orange or fig or some other flavor.

X. Q. 17. You know that that active principle, senna, is a standard medicine, do you not, and a proper one to take for that purpose?

A. I know that it is a standard medicine. I know that it is usually disagreeable when it is used a great deal, and if we can get rid of its disagreeable taste and put it up in some agreeable form, that is what we desire, and we use it.

X. Q. 18. Well, the other things that are put in there in the shape of aromatics do not cut any figure in the properties of the medicine itself?

A. No, sir. I think not.

X. Q. 19. It is the senna that you refer to?

A. It is the senna that we are after, that I am after.

X. Q. 20. Would the juice of figs, if put in a medicine, cut any figure? A. Well, no; not at all.

X. Q. 21. Would it add anything to its medicinal properties? A. I think not.

X. Q. 22. Neither would it take away any of its medicinal properties? A. No.

X. Q. 23. It would be simply superfluous?

A. It might be good as a flavoring, to improve the taste of the medicine.

X. Q. 24. If it was good for anything it would be simply as a flavor? A. That is all.

X. Q. 25. Do you know whether there is any syrup of figs in this medicine or not?      A. I do not.

X. Q. 26. You never saw any statement to that effect?

A. I don't remember that I did.

X. Q. 27. Now, from hearing the name "Syrup of Figs" applied to a laxative in connection also with the pictures of figs on the box would not the natural conclusion be to a person seeing it for the first time, that figs of some kind entered into the composition of the medicine?

(Objected to as incompetent, irrelevant and immaterial and as calling for the opinion of the witness upon a matter that the Court must pass upon; and further that it is not proper cross-examination, no examination having been made of the witness upon that matter in his direct examination.)

A. I think it would depend entirely upon the person's knowledge of a question of this kind. If he knew anything about figs he would know that figs were not sufficiently laxative to be used for such a purpose; and if he knew further anything about proprietary medicine he would know that the name of a proprietary medicine signifies but very little as to the uses or its medicinal qualities.

X. Q. 28. Names are generally selected for advertising purposes, I presume?

A. They are generally selected for advertising purposes, to attract attention, like the name "Listerine" which came out years ago and has been used as a wash. Everybody knows it. The name is taken from the name of the man Lister who was the first man who made any progress in antiseptic surgery.

X. Q. 29. Can you give any reason why the name "Syrup of Figs" would be an appropriate or attractive one to the public to designate a laxative medicine? Why would they select that name?

(The same objection.)

A. I don't believe I can. It seems to me it would be a business proposition. If they thought it would appeal to the public they would use it. I don't know any other reason.

X. Q. 30. In what way would it appeal to the public?

A. Well, I must confess as a physician that I was raised in a country where there were no figs, and although I had heard of them frequently in California, I was never informed that figs were a laxative, that is, before I studied medicine.

X. Q. 31. You never knew of that popular impression?

A. I didn't know even of the popular impression that figs were a laxative. I didn't know anything about figs. I was raised in a country where we never got them green.

X. Q. 32. You heard of that popular impression after you studied medicine?      A. Yes.

X. Q. 33. It is a well known fact, that is, popularly known among people to-day, is it not?

A. I don't know that it is popularly known among people to-day that figs are laxative any more than any green fruit is laxative to some extent.

X. Q. 34. You know that prunes are laxative, or that there is an impression to that effect?

A. There is an impression that prunes are laxative. Prunes are probably more laxative than almost any green fruit. Probably the most laxative of any green fruits.

X. Q. 35. If you were to see a medicine advertised as a laxative medicine under the name "Syrup of Prunes" would there not be an impression conveyed to your mind as to its constituents, assuming that you didn't know what the constituents were, of your own knowledge?

A. Assuming that I didn't know that prunes were a laxative?

X. Q. 36. No, I say, assuming that you didn't as a matter of fact know what the constituents of the medicine were; that all you knew was that it was a laxative and that it was advertised under the name "Syrup of Prunes," what impression would be conveyed to your mind as to the constituents or any of the constituents of such a medicine?

(The same objection.)

In other words, would you suppose that the manufacturer intended to convey the impression that prunes in some form or other entered into the medicine?

A. Oh, I suppose that I might answer that in the same way that I did the other, knowing what I do of these things, and that the name of a proprietary medicine carries with it very little idea of what the medicine contains; I would not attach much importance to the name of it.

X. Q. 37. Suppose it was called the "Syrup of Strychnia," do you think that would be an appropriate name for a laxative medicine?

A. It would not be an appropriate name for a laxative medicine, no, because strychnia is not laxative.

X. Q. 38. Supposed it was called "Syrup of Green Per-simmons," would that be an appropriate name for a laxative medicine?

(Objected to as incompetent, irrelevant and immaterial, not proper cross-examination.) A. No, I think not.

X. Q. 39. Why do you think it would not be a proper name for a laxative medicine?

A. I don't think it would be a proper name for a laxative medicine, because green persimmons or strychnia are known not to be laxative. But if the name "Syrup of Green Persimmons" was put on a bottle and under it was said that it was to be used as a laxative, I would suppose that it contained something that acted as a laxative.

X. Q. 40. Would "Syrup of Figs" be an appropriate name for a laxative?

A. No, it would not be, if it was intended that you should understand that the ingredients of the figs was the medicine there which would act as a laxative, and that the name "Syrup of Figs" was intended to convey that impression, it would not be an appropriate name, because it would not do what it was advertised to do.

X. Q. 41. Could you give any reason why a man would take "Syrup of Figs" as a proper name for his laxative, and spread over the wrappers pictures of figtrees and of young ladies gathering figs—could you give any reason for such a course as that?

A. No, I don't think I could read the man's meaning in that form. I would not like to assume to say what some other man's reason was for putting such a label on his bottle.

X. Q. 42. In view of the fact that there is a popular impression that figs are laxative, is it not probable that the name was selected in order to take advantage of that

impression and to induce the public to think that this was some preparation of figs?

(Objected to as not cross-examination, the witness not having been called upon to testify as to probabilities, especially to probabilities in the mind of individuals, and upon the assumption that there is a popular impression that figs are laxative?      A. I don't know.

X. Q. 43. Well, now take the case of yourself before you studied medicine or knew anything about medicine any more than your general education outside of medicine would instruct you—if you were to buy a bottle of this medicine labeled “Syrup of Figs,” and it was stated it was a laxative, and you also were aware of the popular impression that figs were laxative in their properties, what impression would be on your mind from seeing that label with that name on it and the picture of these figs, as the figs being in the medicine, or a part of it?

(Objected to as immaterial and irrelevant and not cross-examination, assuming matters that are not in evidence.)

A. The question is a hard one to answer, in that it asks me to give an opinion about something based on a supposition that I have a certain knowledge; that is, it asks me what I would think of a certain thing if I had certain information about it.

X. Q. 44. That is what the question is that I asked you?

A. I don't know what I might think of a thing if I had certain information about it.

X. Q. 45. Then you can't answer what would be the impression that would be conveyed to your mind?

A. I can't state what impression would be conveyed



to my mind upon anything until I had gotten the information about it.

X. Q. 46. Would you think that there were any figs in it at all?

(The same objection.)

A. That would depend entirely upon how much knowledge was brought to bear upon my mind. If a person brought to me a preparation and said there were figs in it, and I had no good reason to believe otherwise, I would believe that his preparation was composed as he stated.

X. Q. 47. Suppose he brought you a preparation and said this was a good laxative and didn't say whether figs were in it or not, and all you knew in regard to what it was composed of was by seeing the name "Syrup of Figs" upon it, what would be the effect upon your mind?

A. I would suppose that there were figs in the preparation if it was called "Syrup of Figs."

X. Q. 48. If a person should bring to you a bottle labeled "Syrup of Orange," would you not suppose that it was flavored with orange or that orange in some form entered into the composition of it?

(The same objection.)

A. I think that in that case I would suppose that there was orange in it. The question asked me a little while ago in regard to syrup of strychnia, for instance. There it would be very improbable to believe such a thing, because there is no such thing as syrup of strychnia. I would suppose if it was called "Syrup of Orange" that there was orange in it, because we know there is such a thing as syrup of orange.

X. Q. 49. And that expression naturally conveys the idea that the orange enters into the concoction in some way?

A. Yes, because I know that there is such a thing as syrup of orange. I know there is a preparation "Syrup of Orange." But there is no such preparation in pharmacy known as "Syrup of Figs."

X. Q. 50. Don't you know that a preparation has been known in pharmacy for a long time as syrup of figs, as early as the year 1875?

A. Yes—no; I don't know that there was such a preparation, and looking up the official preparations I can say that I never saw any mention of syrup of figs.

X. Q. 51. Don't you know that syrup of figs has been published in French books on pharmacy as early as 1875?

A. No, I don't know that.

X. Q. 52. The use of the name of any particular fruit in connection with syrup carries the idea that the syrup is flavored by that fruit, does it not?

(The same objection.)

A. I would suggest that a pharmacist is more competent to answer that question than I am, but I think that in pharmacy the name of a fruit in connection with any syrup indicates that the syrup is flavored with the fruit. I say that is a part of pharmacy; we have in pharmacy certain syrups that are flavored with certain fruits. But there are comparatively few of them.

X. Q. 53. If it should be a fact that in over one thousand gallons of this medicine of complainant's there was only one gallon of fig juice, would that fig juice have any

appreciable effect upon the medicine, or could it be detected?      A. I don't think it could.

X. Q. 54. It would have no more effect than a gallon of any other saccharine matter?      A. None whatever.

X. Q. 55. It would not give it any medicinal properties?      A. No.

X. Q. 56. And the medicine would be just as good without it as with it?      A. Yes, sir.

#### Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. In your cross-examination you said that senna had long been recognized as an excellent laxative, but that it was disagreeable to take, and you spoke about its bitter taste. Does it have any other disagreeable effect?

A. Yes, it is disagreeable in its action, it has a griping effect.

R. Q. 2. On the bowels?      A. Yes, sir.

R. Q. 3. Then if a preparation of senna can be made which will obviate the griping effect and disagreeable taste, it becomes a good laxative, does it?

A. Yes, sir.

#### Recross Examination.

(By Mr. MILLER.)

R. X. 1. Would figs or fig juice accomplish that?

A. It would not.

R. X. 2. So that if that purpose is accomplished in

complainant's medicine, it is accomplished not by fig juice but by something else?      A. By something else.

R. X. 3. And that something else is not published to the world?

A. It is to this extent, that the active principle of senna which was introduced into this syrup of figs—its properties are owing to the peculiar methods pursued in extracting those active principles from the senna.

(Further hearing continued to Thursday, October 13, 1898, at 10 A. M.)

Thursday, October 13, 1898, 10 A. M.

Counsel appearing:

For complainant, Warren Olney, Esq.,

For respondents, John H. Miller, Esq., and Purcell Rowe, Esq.

(Note by stenographer.—At the opening of this session, the examination in chief of R. E. Queen was resumed. By request of attorneys for the respective parties the transcript of his testimony is introduced in this record, commencing with page 28. Further hearing adjourned to Friday, October 14, 1898, at 10 A. M.)

Friday, October 14, 1898, 10 A. M.

Counsel appearing:

For complainant, Warren Olney, Esq.,

For respondents, John H. Miller, Esq., and Purcell Rowe, Esq.

Examination in Chief of

HENRY MICHAELS, a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your business, Mr. Michaels?

A. A wholesale druggist.

Q. 2. Where? A. San Francisco.

Q. 3. How long have you been in that business in San Francisco? A. Since 1864; that is, connected with it.

Q. 4. What is the name of your house?

A. Langley & Michaels Company.

Q. 5. It is an incorporation, is it? A. Yes, sir.

Q. 6. Are you acquainted with the medical preparation put upon the market by complainant, the California Fig Syrup Co? A. I am.

Q. 7. How long have you been acquainted with *from* product or preparation?

A. Well, I would say, from recollection, more than ten years.

Q. 8. By what name is that preparation known to the trade? A. "Fig Syrup."

Q. 9. Is there any other preparation or product upon the market that goes by the name "Fig Syrup" or "Syrup of Figs"?

A. I think there is one comes here from New York; I am not sure though. I think it is called the Garfield Tea Fig Syrup.

Q. 10. Is there any other that you know of?

A. We don't come in contact with it if there is. At least I have never seen it.

Q. 11. Do you keep yourself informed in regard to proprietary medicines upon the market?

A. Generally I think I do.

Q. 12. If any medicine is a popular medicine you know it, do you?      A. I do.

Q. 13. Do you deal in all popular proprietary medicines?      A. We claim to; yes, sir.

Q. 14. Do you know whether or not the product of complainant, known as "Syrup of Fig" or "Fig Syrup" is a popular medicine?      A. I do.

Q. 15. What is it?      A. It is.

Q. 16. Now prior to your becoming acquainted with this production, did you know or had you ever heard of any product being upon the market or in use, by the name of "Syrup of Figs" or "Fig Syrup"?      A. No, sir.

Q. 17. Who was it that first originated the term "Syrup of Figs" or "Fig Syrup"?

(Objected to unless it is shown that the witness knows who originated it.)

Q. 48. Answer the question. Who was it who first originated the term "Syrup of Figs" or "Fig Syrup" as used in the drug trade?

A. I understand Mr. Queen, or the firm with which he is connected.

Mr. MILLER.—I move to strike out the answer on the ground that it is not testimony.

Q. 19. (By Mr. OLNEY.)—How do you understand that, Mr. Michaels?

(Objected to as incompetent, irrelevant and immaterial.)

Q. 20. You say you understand that it was Mr. Queen?



A. The first we knew that was when it was offered by Mr. Queen in this market. He was the first person we ever knew to have anything to do with it at all.

Q. 21. Was he the first person that ever to your knowledge used the name "Syrup of Figs" or "Fig Syrup" as applied to a medicine? A. Yes, sir.

Q. 22. Have you ever known the term "Syrup of Figs" or "Fig Syrup" to be applied to any other product except the complainant's production, until within the last few years? A. No, sir.

Q. 23. What do you understand in regard to any other product that may be upon the market now and going by the name of "Syrup of Figs"?

(Objected to as incompetent, irrelevant and immaterial, because what the witness understands is certainly not competent testimony.)

(Q. 23 read.)

Q. 24. I refer to the drug trade?

(Same objection.)

A. It is looked upon as an imitation.

Q. 25. As to what you understand as used in the drug trade?

(The same objection.)

A. Well, I don't understand.

Q. 26. You state it is looked upon as an imitation. I have asked you what you understand in regard to it?

A. I understand it to be an imitation.

Q. 27. You understand it is an imitation? An imitation of what?

(Objected to as irrelevant.)

A. I don't mean it in that sense exactly. But it is put up in that way simply because the other trademark became popular. And they use it for that reason, because it is well known.

Q. 28. Do you know whether this preparation has been used extensively or not upon the Pacific Coast?

A. It is.

Q. 29. Do you know of any preparation whatsoever, medicinal or otherwise, that has been known to the trade by the name "Syrup of Figs" or "Fig Syrup," except this preparation made by complainant?

A. Only those that have come up in the last two or three years; one put up in Oakland, I believe, used the name. I understood that they were stopped by the Courts. They have used the name in that way as an imitation.

Q. 30. But do you know of any preparation that has ever been sold either as a food or as anything else, by the name "Syrup of Figs" or "Fig Syrup," prior to the use of that name by complainant in this action?

A. I do not.

Q. 31. Do you in your business find it necessary to know what the staple articles are in stock kept by retail druggists?

A. Yes, sir; I do.

Q. 32. Can you state whether or not complainant's product is a staple article kept and sold by retail druggists throughout the country?

A. It is.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. Did I understand you to testify of your own knowledge that these other syrup of figs that are on the market were imitations of complainant's and were put up by the parties who put them up because of the popularity of complainant's trademark?

A. I mean imitations of name, the name "Syrup of Figs."

X. Q. 2. Do I understand you to testify that those parties actually put them up for that purpose?

A. I do.

X. Q. 3. How do you know that?

A. I don't know as I get your exact meaning. I know it for the reason that this being a popular trademark, these people are presumed to put up the medicine in that way to take advantage of the popularity of these goods.

X. Q. 4. That is just what I am trying to get at. You say now you presume they are put up in that way. On your direct testimony you swore positively that they did put them up in that way.

A. That is what I say; to the best of my knowledge and belief that is what they do it for, for this purpose.

X. Q. 5. Of course, you don't know that of your own knowledge, do you? A. I think I do.

X. Q. 6. What is the basis of your knowledge?

A. My general contact with the drug trade.

X. Q. 7. Did they tell you that they put it up for that purpose? A. No, sir.

X. Q. 8. Well, then, how do you know? How can you come here to testify on your oath to a fact that you don't know of your own knowledge?

A. I know by my business experience that people put it up for that purpose. That is all I can say.

X. Q. 9. That is merely a conclusion that you arrive at—that they put it up for the purpose of imitating this trademark, is it not? A. Yes, that is my conclusion.

X. Q. 10. You don't know how long these people have been putting it up, do you? A. I do not.

X. Q. 11. You don't know when they commenced to put it up, do you?

A. I don't know that they put it up at all. I simply know that the article comes into the market.

X. Q. 12. Where does the article come from?

A. I could not tell you.

X. Q. 13. You don't know what people put it up, do you? A. I don't except by general report.

X. Q. 14. You don't know where it is manufactured, do you? A. I do not.

X. Q. 15. Do you know of a syrup of figs that is manufactured by Frederick Stearns & Co. of Detroit?

A. I never saw it.

X. Q. 16. Did you ever hear of that article manufactured by that firm? A. Not to my knowledge.

X. Q. 17. That is a large manufacturing drug house of Stearns & Co., is it not?

A. Well, it is understood to be a nonsecret firm.

X. Q. 18. It is a large firm, is it not?

A. Yes, sir; a large firm.

X. Q. 19. It sells its products on this Coast as well as in the East, does it not? A. It does and largely, too.

X. Q. 20. You make it a part of your business to be acquainted generally with the products of various manufacturing drugstores, do you not?

A. That is my business.

X. Q. 21. Now did you never hear of "Syrup of Figs" being put on the market and sold by that firm?

A. I did not. We sell their goods, those that are well known here, and they put up other goods which we never come in contact with.

X. Q. 22. You do sell some of their goods, do you not?

A. Oh, yes, we do.

X. Q. 23. Did you ever see a publication issued by them called the "New Era"?

A. I have I think, but it does not naturally come in contact with me in that way. We simply get their price-lists of goods they push here.

X. Q. 24. Who puts this article called "Garfield Tea Fig Syrup"?

A. A firm in New York called the Garfield Tea Company.

X. Q. 25. Do they send that article out here for sale?

A. They do. I wont be positive about that name, but that is my impression as to what they call it. It has a very trifling sale.

X. Q. 26. Did you ever sell any of that medicine?

A. I believe I did.

X. Q. 27. Here on this Coast?

A. Very small quantities. I don't know. My memory is it is a ten-cent article. I could not say as to that.

X. Q. 28. Did it come to you in the ordinary course of druggists' trade? A. Yes, sir.

X. Q. 29. Did you receive orders from other persons for it or did you carry it in stock, or what?

A. We receive orders.

X. Q. 30. And when you received orders for it, you supplied yourself with it and then sold it to the persons asking for it, did you? A. We did.

X. Q. 31. How long ago was that?

A. Within the past two years.

X. Q. 32. Was it a laxative medicine, used for those purposes? A. Supposedly.

X. Q. 33. Do you know what is the basis of this "Fig Syrup" of complainant's? A. I do.

X. Q. 34. What is it? A. Senna.

X. Q. 35. What else is there in there?

A. I could not tell you that.

X. Q. 36. Are there any figs in it?

A. I have always understood there were some; not as a controlling factor at all; simply to give it a flavor or something of that sort.

X. Q. 37. What did you understand the figs were put in there for? A. To flavor the medicine.

X. Q. 38. Isn't the quantity of figs so very small that it does not flavor the medicine?

A. Well, I would not think that. I don't know what the quantity is. I never tasted it myself.

X. Q. 39. Isn't it a fact that there are aromatics placed in the medicine for the purpose of giving it a taste?

A. I don't know that.

X. Q. 40. You don't know what the constituents of it are, do you?



A. I simply know in a general way that senna is the controlling medicine, as I have always understood.

X. Q. 41. Do you sell other kinds of syrup in your drug business?      A. We do.

X. Q. 42. What syrups do you sell? Name some of them.

A. Well, Schenk's Pulmonary Syrup, Winslow's Soothing Syrup, Winchell's Syrup, Fellows' Syrup of Hypo-Phosphates; there are others, but I don't happen to recollect them just now.

X. Q. 43. Do you sell or have you ever known of a syrup of rhubarb?

A. Yes; a pharmaceutic preparation; yes; we make that in our store.

X. Q. 44. How do you make that in your premises?

A. I am not a manufacturing druggist. I don't seem to know that. I could not give you the formula.

X. Q. 45. I didn't ask you for the formula. I asked what are the constituents of it?

A. It is made from rhubarb.

X. Q. 46. A simple syrup, I suppose, is nothing more than sugar and water or some kind of saccharine matter and water?      A. Yes, sir.

X. Q. 47. Then when you add the rhubarb to it you call it syrup of rhubarb?

A. Oh, that is not precisely it.

X. Q. 48. You use rhubarb in it?      A. Yes, sir.

X. Q. 49. Why do you call it syrup of rhubarb?

A. Because it is a syrup of rhubarb.

X. Q. 50. Why is it you apply the name rhubarb to it in preference to some other name?

A. Because that is the cathartic principle in the article.

X. Q. 51. Does the rhubarb give it its distinctive flavor? A. Certainly.

X. Q. 52. When you call it syrup of rhubarb that is the intention you have, to convey the idea that there is rhubarb in it? A. Yes, sir.

X. Q. 53. How is it in regard to any other syrup, say, syrup of orange, for instance? What does that indicate?

A. Well, orange itself has no particular virtue that I know of, except to add to the flavor.

X. Q. 54. Does the orange give it its flavor?

A. Yes, sir.

X. Q. 55. Then, orange is used in the manufacture of the syrup, is it not? A. They use it in that way.

X. Q. 56. Would that same testimony apply to syrup compounded with other fruits as well?

A. Well, I would not like to say.

X. Q. 57. That is, would the name of the syrup be suggested by the name of the fruit that was put in it?

A. Well, ordinarily, yes. Take raspberry syrup or lemon syrup. Of course, they are simply for flavoring.

X. Q. 58. Now, what does raspberry syrup indicate?

A. That it has raspberries in it.

X. Q. 59. What does lemon syrup indicate?

A. That it has lemon in it.

X. Q. 60. Does it indicate that those fruits give the syrup its distinctive flavor? A. Yes.

X. Q. 61. Now, take an ordinary individual, Mr. Michaels, who has no knowledge of pharmacy, or preparations made in a laboratory, what impression would be

produced on his mind from seeing on the first occasion a bottle labeled "Syrup of Figs," without knowing actually what its constituents were. What would be the impression created on his mind as to the ingredients or any of the ingredients of that article?

(Objected to as incompetent, irrelevant and immaterial, and as relating to matter as to which the witness was not examined in chief, and calling for the opinion of the witness upon a matter in regard to which he has not testified.)

A. I don't know.

X. Q. 62. Suppose you were to exhibit to an ordinary individual a bottle labeled "Syrup of Raspberry," what do you suppose would be the impression created on his mind, if any, with regard to the constituents of the syrup?

A. That it contained raspberry.

X. Q. 63. If you exhibited to him a bottle labeled "Syrup of Figs," what would be the impression on his mind as to that?

(Objected to as not proper cross-examination for the reasons stated in the last foregoing objections.)

A. I don't know.

X. Q. 64. What does the name "Syrup of Figs" indicate in ordinary language?

A. To the trade do you mean?

X. Q. 65. No; in ordinary language, what is the meaning of those words "Syrup of Figs" ?

A. Well, I never heard the name applied until these people took it up.

X. Q. 66. If you were to hear the word "syrup" applied to a new vegetable or fruit to which it had never been applied before, what would that indicate?

A. Well, in medicine I would take it to indicate a compound. It is common practice in putting up proprietary medicines to invent or take names, catchy phrases, as we call them. They use this in that way. Some of them coin words altogether.

X. Q. 67. Is it a common practice to employ a phrase as indicating a compound which incorrectly described the contents of the compound?

A. Well, it does not imply that exactly, but it does not convey to the dealer's mind, at least, the idea that that compound is solely composed of that article. Now, you take sarsaparilla. That is one of the commonest articles named in the drug trade, but that is only an agent. It is the most unimportant part of the whole compound.

X. Q. 68. Do you mean by that that the term "Syrup of Figs" does not indicate to the druggist that the article is composed of a syrup made from figs?

A. Not entirely, no; not at all.

X. Q. 69. Do you know whether it carries that impression to the mind of an ordinary individual who knows nothing about pharmacy, but who wants to buy a laxative medicine? A. I do not.

X. Q. 70. That you don't know anything about?

A. No.

#### Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. You spoke about Frederick Stearns & Co. being manufacturers of nousecret medicines. What is understood by that in the trade?

A. Well, nonsecret medicines are understood by the trade to be such articles as will come pretty near in appearance and quality to well-known patent medicines, for the purpose of selling in their place.

R. Q. 2. Practically, then, what is known in the trade as a manufacturer of nonsecret medicines is one who manufactures articles as nearly like the proprietary or patent medicines as possible, in order to take the place of these medicines in the trade? A. Yes.

R. Q. 3. That is the understanding in the trade?

A. That is the understanding, yes.

#### Recross Examination.

(By Mr. MILLER.)

R. X. 1. They publish the formulas under which they manufacture the articles, do they not?

A. I believe some of them do.

R. X. 2. That is why they are called nonsecret manufacturers? A. Yes; I think so.

R. X. 3. Instead of having a secret formula and imposing upon the public in that way, by palming off the article that they are afraid to give the constituent of, these nonsecret manufactuers publish to the world the formula?

A. I don't know what their theory is. I know the object is to get the benefit of the popular medicine.

R. X. 4. (By Mr. OLNEY.)—Their practice is to sell imitation of other articles?

A. Well, displace well-known articles.

R. X. 5. (By Mr. ROWE.)—Are you a manufacturer at all, Mr. Michaels? A. Not in a large way.

R. X. 6. Do you manufacture at all?

A. We do manufacture.

R. X. 7. Are all of your preparations put up by a formula invented or introduced by yourself?

A. Oh, no, they are mostly staple articles.

R. X. 8. Do you put up any product or any preparations that are sold by other firms, other houses?

A. Yes.

R. X. 9. Do you ever put up a preparation that has been antecedently sold by some drug house or manufacturer of the preparation?

A. No, not except it is public property, you know.

R. X. 10. You don't put up any compound or any preparation or any article except some article that is public property, that is, anybody in the United States has a right to put it up?

A. Oh, no, we also have trademarks that we own ourselves.

R. X. 11. Those trademarks apply only to articles or preparations that you invented the formula of?

A. No, we didn't invent them at all, we simply bought the trademark.

R. X. 12. What I am trying to get at is this: is there any preparation that you sell that you claim is manufactured by your firm that was, prior to your manufacture of that preparation, sold by some other drug firm in the United States, that was not a formula that was public property?

(Objected to as immaterial and irrelevant, and as asking a question on cross-examination in regard to which the



witness was not examined in chief; therefore not proper cross-examination.)

A. I don't really know how to answer that question. If you mean to say that we put up any imitations of goods, I must say no.

R. X. 13. Do you put on the market any preparation that you were induced to manufacture because it had a popular sale and it had been first introduced to the trade by some other firm?

(Objected to as improper and not cross-examination, and as a question that ought not to be put to the witness on the stand.)

R. X. 14. Have you ever put on the market an article because it had already an established popularity?

A. If the gentleman means to ask me if we have used a name adopted by any other party for putting up goods here, I say no, unless we had a clear right to put on the trademark in that way.

R. X. 15. Have you ever done this: Have you ever, realizing that some particular preparation or product of some manufacturer which had gained a popular reputation and was largely sought for by the drug trade, have you ever taken the name of this popular article and used it on your preparation?

A. Well, we have put up goods in this way, for instance, that is, nonsecret people offer to our trade goods put up that they call, for instance, sarsaparilla, and they put them up in a popular way, and we have also done the same thing.

R. X. 16. Can you state one particular case?

A. Oh, that is sarsaparilla.

R. X. 17. What was the name of that article before you manufactured it?

A. Sarsaparilla. It has been a common name ever since I have been in the drug business.

R. X. 18. Do you recollect any other?

A. I do not.

R. X. 19. And you call your article what?

A. Sarsaparilla.

R. X. 20. Then you put up sarsaparilla and call it sarsaparilla? A. It is a common name.

R. X. 21. Have you ever been requested by any of your patrons, customers, to put up a syrup of figs?

A. I don't think so. I think they would know better than to ask us.

R. X. 22. Have you any interest in this corporation known as the California Fig Syrup Co., complainant?

A. None whatever.

R. X. 23. You never were connected with it in any form whatever? A. No, sir.

R. X. 24. Except to sell their product as any other druggist would, or wholesale firm? A. That is all.

#### Examination in Chief of

W. P. REDINGTON, a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your business, Mr. Redington?

A. Wholesale druggist.

Q. 2. How long have you been in that business?

A. I have been connected with the wholesale drug business since 1862.

Q. 3. How long in this city?

A. Since that time.

Q. 4. What is the name of the house or corporation with which you are connected?

A. Redington & Co.

Q. 5. Wholesale druggists?

A. Wholesale druggists.

Q. 6. Are you acquainted with the product put up and sold by the California Fig Syrup Co. known as "Syrup of Figs" or "Fig Syrup" ?

A. I am.

Q. 7. How long have you been acquainted with it?

A. Well, twelve or thirteen years; since it has become known through advertisements.

Q. 8. You have been acquainted with it ever since it became known through advertising? Have you dealt in that product?

A. We have.

Q. 9. Do you know whether or not it is a popular production?

A. Yes; I know that it is a very popular preparation.

Q. 10. Do you know whether or not the sales are large?

A. Yes, I know they are very large.

Q. 11. Do you know whether or not it constitutes one of the staple products kept by retail druggists throughout the country?

A. We look upon it as one of the leading proprietary articles.

Q. 12. What can you say in regard to the sales that the house of Redington & Co. has made of this article? Whether they have been extensive or not.

A. They have been very extensive.

Q. 13. For how long?

A. For some years past. We have sold very large quantities of it, up to hundreds of thousands of dollars probably.

Q. 14. Do you know what the reputation of the compound is with the public?

A. I know it is a popular remedy.

Q. 15. Now, prior to the time that your attention was called to this product had you ever heard or known of an article on the market by the name of "Fig Syrup" or "Syrup of Figs"?

A. Not that I remember. I think there was no such preparation on the market at all until this preparation was originated.

Q. 16. Had you ever heard or known of any preparation of food or medicine or anything else prior to that time that was known by the name of "Fig Syrup" or "Syrup of Figs"?

A. No, sir.

Q. 17. Was it necessary in your business to inform yourself of the article upon the market and for which there was a demand, and supplied by druggists?

A. I am acquainted with the articles which were dealt in in an extensive way.

Q. 18. Now I will ask you if, as a druggist and from your acquaintance with the business and your acquaintance with the reputation of this preparation of complainant, whether or not this preparation of complainant's has come to be known by the public by the name "Syrup of Figs" or "Fig Syrup"?

A. Yes, sir.

Q. 19. It has?

A. It has.

Q. 20. Now suppose some other preparation was put upon the market purporting to be a laxative preparation, and named "Syrup of Figs," would that, in your opinion, effect the sale of complainant's article?

(Objected to as incompetent, irrelevant and immaterial, not being a matter for the opinion of the witness.)

A. Yes, if those preparations were pushed to any extent--introduced to the trade.

Q. 21. Now, from your experience in the business, can you say whether or not, if such a preparation was made and marked "Syrup of Figs," and purported to be a laxative preparation, whether that could be palmed off upon unsuspecting customers as the complainant's article?

(The same objection.)

A. I think it might.

Q. 22. What is understood in the trade by the name "Syrup of Figs" or "Fig Syrup" ?

A. It would mean relating to this article.

Q. 23. Now, suppose the term is used in the trade "Fig Syrup" or "Syrup of Figs," what is meant?

A. Well, it is a preparation that is manufactured by the California Fig Syrup Co.

Q. 24. Now, in regard to orders from retail druggists; that is to say, where "Fig Syrup" is wanted by your retail customers, in what terms is the order put generally?

A. You mean in what way do the customers order it?

Q. 25. Yes, sir.

A. "Syrup of Figs" usually or "Fig Syrup."

Q. 26. Your customers simply ask for "Syrup of Figs" or "Fig Syrup" ?

A. "Syrup of Figs" or "Fig Syrup."

Q. 27. Is there any other preparation known to the trade under the name of "Syrup of Figs" or "Fig Syrup," excepting the complainant's preparation or imitations thereof?      A. Not that I know of.

Q. 28. I show you a package marked "Exhibit H," attached to the bill of complaint here, and being the same package referred to in your affidavit on file in this action, and ask you if you have ever seen that before?

A. Either this or a similar package.

Q. 29. Where did you get the package?

A. The preparation was bought from the firm of C. E. Worden & Co. I am not sure about that, whether that was billed by C. E. Worden, or whether it was billed by the San Francisco Fig Syrup Co.

Q. 30. Do you remember making the purchase?

A. I remember that a purchase of this preparation was made.

Q. 31. (By Mr. MILLER.) By you?

A. Not by me personally, but by my instructions.

Q. 32. (By Mr. OLNEY.) Of whom was the purchase made?

(Objected to on the ground that the witness has already testified that the preparation was not made by him, and therefore whatever he says must necessarily be hearsay, and therefore incompetent evidence.)

Q. 33. Of whom was the purchase made?

A. Well, I am not sure, Mr. Olney, whether that was made of the San Francisco Fig Syrup Co. or C. E. Worden & Co.

Q. 34. Do you know of an incorporation or firm doing



business under the name of the San Francisco Fig Syrup Co.?      A. I do not.

Q. 35. Mr. Redington, I call your attention to your addavit. Perhaps that will refresh your recollection.

Mr. MILLER.—We object to counsel calling his attention to his affidavit or refreshing his recollection in any way. The witness is fully competent to take care of himself and testify to the facts that he knows.

Q. 36. (By Mr. OLNEY.)—Have you any means of ascertaining now from whom you made the purchase of this package?

Mr. MILLER.—We object to that because the witness has already testified that he did not purchase it himself.

Q. 37. (By Mr. OLNEY.)—Please answer the question.

A. I probably could obtain that information by going through our invoices, as to the party from whom we bought this.

Q. 38. I show you an affidavit in this case made on the twenty-third day of August, 1897, before Donzell Stoney, a notary public, and ask you to look at the bottom of page three and see if that will refresh your recollection as to the purchase of that article.

Mr. MILLER.—We object to the affidavit being shown to the witness on the ground that it is incompetent, irrelevant and immaterial, and it is not proper to coach the witness in this way. The witness has already testified that he did not buy this bottle personally, and whatever therefore he might say in the affidavit to the contrary would not affect the case, and would be incompetent.

Q. 39. (By Mr. OLNEY.)—I call your attention to the last sentence on page 3, and ask you if that will refresh

your memory in regard to the purchase of Exhibit "H."

A. (After examining.) That must have been the fact.

Q. 40. I will ask you if you remember the circumstances under which you came to make the order?

A. Yes. I was requested by Mr. R. E. Queen to send to Clinton E. Worden and purchase one dozen of this preparation manufactured by the San Francisco Syrup of Figs Co.

Q. 41. Did you do so?           A. I did.

Q. 42. And is this Exhibit "H" one of the packages purchased in accordance?

A. One of the bottles, or one similar to the bottles that I bought or had bought.

Q. 43. Have you any of the other bottles purchased by you, or packages, at your store?           A. Yes.

Q. 44. Now, Mr. Redington, has your firm ever received orders from customers for imitations of the "Fig Syrup"?           A. We have.

Q. 45. Have you filled any of those orders?

A. We have.

Q. 46. Where have you got the imitation with which you filled the orders?

A. We bought them in this market.

Q. 47. From whom?

A. From C. E. Worden & Co. is one. We bought them from others.

Q. 48. From whom else?           A. F. W. Weeks & Co.

Q. 49. What price did you pay for these packages?

A. I don't remember.

Q. 50. Could you get that invoice and let us have it?

A. I will try to find it, Mr. Olney.

Mr. OLNEY.—With the exception of introducing that invoice if he can find it, my examination is closed.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. Mr. Redington, can you identify this particular package, Exhibit "H" ?      A. I cannot, sir.

X. Q. 2. Can you swear whether you ever saw that identical package before or not?

A. I cannot swear that I have ever seen that identical package. I have seen one similar to it.

X. Q. 3. Can you swear that you bought that identical package from Worden & Co.?

A. Not personally; no, sir.

X. Q. 5. Then what do you mean by asserting in your affidavit that Exhibit "H" was purchased by you from the defendant Clinton E. Worden & Co. on or about the twenty-sixth day of May, 1897?

A. I instructed our buyer to purchase one dozen of this preparation.

X. Q. 6. But I am asking you: you say you instructed your clerk to buy it. Now why do you come into this Court with an affidavit and swear that you yourself bought it on the twenty-sixth day of May, 1897?

A. Well, because to all intents and purposes I did buy it. I instructed our buyer to buy it in the usual course of business, in the same manner as our goods are bought.

X. Q. 7. Who was it you instructed to buy this package?      A. A man by the name of McCarthy.

X. Q. 8. Then did you go with him up to Worden's to buy it?      A. No, sir.

X. Q. 9. Do you know where he went to buy this medicine?

A. Well, I presume he bought it from Worden.

X. Q. 10. I didn't ask you what you presumed. I asked what you knew.

A. Inasmuch as I received the bill, I suppose it is natural to conclude that it was bought from Worden.

X. Q. 11. I am not asking you what it is natural to conclude or anything of that kind. What I want to know of you is, what you know of the facts: Now you didn't go with this man when he went up to buy this medicine?

A. No, sir.

X. Q. 12. He came back to you with the medicine and a bill?      A. Yes, sir.

X. Q. 13. That is all you know about it?

A. That is all I know about it.

X. Q. 14. Now, upon the strength of that, are you willing to swear that you yourself bought this medicine at the time stated?      A. I did swear to it.

X. Q. 15. I know you swore to it, and I am trying to find out from you now what explanation you have to make of having sworn in your affidavit that you bought this medicine, and then coming here and not being willing to swear that you did buy it?

A. Well, I did buy it through a representative that I sent to buy those goods, in the same manner that our other goods are bought.

X. Q. 16. How do you know that he bought it from Worden & Co.?      A. He produced the bill.

X. Q. 17. Is that the only way you know of it?

A. That is the only way I know of it.

X. Q. 18. To whom was the bill given?

A. To me.

X. Q. 19. To you personally or to the firm of Redington & Co.?

A. By a member of the firm of Redington & Co. it was given to me.

X. Q. 20. Was the bill directed to Redington & Co.?

A. Yes.

X. Q. 21. So that the sale, as a matter of law, was made to Redington & Co.?

A. Yes, sir.

X. Q. 22. That is the basis, the whole basis, of your statement that you bought this medicine from Clinton E. Worden & Co.?

A. Yes, sir.

X. Q. 23. What day was it that you bought it?

A. I could not tell you.

X. Q. 24. Have you any recollection?

A. No, sir.

X. Q. 25. Why did you buy it?

A. I just told you.

X. Q. 26. What was it?

A. At the request of R. E. Queen.

X. Q. 27. What did Mr. Queen want with it?

A. I don't know.

X. Q. 28. Did he state to you why he wanted you to buy it?

A. No, he didn't make any explanation to me.

X. Q. 29. You knew what he wanted it for, did you not?

A. I didn't ask him anything about it.

X. Q. 30. You have been very rich in presumption and

supposition here. What do you presume or suppose was his object in wanting to buy it?

Mr. OLNEY.—We object to such language being used to the witness, as it is unwarranted by anything that the witness has said or done.

X. Q. 31. (By Mr. MILLER.)—Now, will you answer the question please? A. What was the question?

X. Q. 32. What did you presume was his object in getting it?

A. I presumed that it was to procure evidence against the parties who were putting up this preparation.

X. Q. 33. Evidence for this suit, you mean?

A. Evidence for the same suit.

X. Q. 34. Isn't it a fact that Mr. Queen came down to you and said that Worden was infringing his trademark, and that he wanted you to go up there and buy this medicine, or send up there and buy this medicine from him, so that he could use it in evidence in the suit, or some words to that effect? A. He might have said so.

X. Q. 35. Then that was the object and purpose of making the purchase, was it not?

A. It is not unlikely that that may have been the purpose?

X. Q. 36. Now, you say that this medicine of complainant's has a good reputation and is a meritorious medicine. Do you base that statement upon the fact of the large sales that have been made and the advertising that has been given to it?

A. Mainly; yes, sir.

X. Q. 37. That is generally the way of pushing propri-



etary medicines, isn't it, by making unusual efforts, and advertising and spending a lot of money in that way?

A. Yes, sir.

X. Q. 38. "St. Jacobs Oil" is also a medicine that has a large sale and has got a good reputation, has it not?

A. It is sold very extensively; yes, sir.

X. Q. 39. Is it a valuable remedy?

A. I should so consider it.

X. Q. 40. Is it a proprietary medicine?

A. Yes, sir.

X. Q. 41. Has it a good reputation?

A. So far as I know; yes, sir, it has a good reputation with the trade.

X. Q. 42. It has been advertised about as well as any medicine ever has been, has it not?

A. Well, it has been advertised on a very extensive scale.

X. Q. 43. Do you know the formula by which it is made?

A. I do not.

X. Q. 44. Do you know what its constituents are?

A. I do not.

X. Q. 45. You only judge of the fact that it is a good medicine, then, by the reputation which it has, and the extent of its sales, do you?

A. Yes, sir.

X. Q. 46. Do you deal in it and sell it?

A. We do.

X. Q. 47. Are you familiar with the label of the package that is used by the California Fig Syrup Co. in connection with the medicine?

A. The label of the carton that is used on that bottle, do you mean?

X. Q. 48. Yes, by the complainant. A. Yes, sir.

X. Q. 49. You have known that for some time, have you? A. For some years.

X. Q. 50. Is that well known in the trade?

A. The preparation is very well known.

X. Q. 51. I mean the label.

A. Yes, sir; the label is well known to all druggists.

X. Q. 52. Now, will you please look at the complainant's label which has been put in evidence here, and is marked Exhibit "A," and place it by the side of the Exhibit "H" that you spoke of purchasing?

A. Yes, sir.

X. Q. 53. Now, do you think that a dealer in that medicine would ever take Exhibit "H" for the complainant's medicine? A. No, sir.

X. Q. 54. Why not?

A. Because there is no similarity in the label, and if he bought the imitation he would probably obtain it for less money than the genuine article was sold for. The dealer is acquainted with the various labels under which it is sold.

X. Q. 55. What is the object, if you know, of putting on the complainant's label this picture of a fig branch with figs on it, and the pictures on each end of a young lady gathering figs?

A. I suppose as a trademark.

X. Q. 56. Well, can you give any reason why they selected the fig in preference to anything else as a trademark?

(Objected to as not cross-examination, and as calling

for the opinion of the witness as to the reason of somebody else.)

A. Well, as the preparation is called "Syrup of Figs," I suppose that that cut or picture was used as a trademark to indicate that syrup of figs was used in the compounding of the preparation?

X. Q. 57. Is there a popular impression among people at large that figs have some kind of a laxative property?

A. Yes, sir; there is that impression.

X. Q. 58. How long have you known of the existence of such an impression as that? A. For some years.

X. Q. 59. Can you state what impression would be made on the mind of an ordinary person who knew that figs had laxative properties, or who supposed that figs had laxative properties, by seeing a bottle of laxative medicine labeled "Syrup of Figs," and without knowing actually what its constituents were?

Mr. OLNEY.—We object to that as not proper cross-examination and as asking for the opinion of the witness as to what would be the thoughts or opinions of some third person; the question does not call for anything that would be evidence in any case whatever.

Mr. MILLER.—I will withdraw that question temporarily. You have been in the drug business for thirty years, have you not?

A. Yes, sir; more than that.

X. Q. 61. You have had a great many dealings with people coming in and buying medicine, have you not?

A. Yes, sir.

X. Q. 62. You have a pretty good knowledge of the

way people come in and how they do when they come in to buy a bottle of medicine, have you?      A. Yes, sir.

X. Q. 62. They look at the labels, do they not?

A. No, sir.

X. Q. 63. They never look at the labels at all?

A. No, sir; not the buyers that come into our place of business. We are not in the retail business. Our business is wholly wholesale.

X. Q. 65. You have not any retail business?

A. No, sir; not any retail business.

X. Q. 66. But you know the way people generally do in coming into a store to buy medicine, in a retail store? Have you ever had any experience in a retail store?

A. No, sir; I don't know anything about that.

X. Q. 67. You have sufficient ordinary intelligence, have you not, to know how people would act under such circumstances as that, just as anybody else would, whether he is in the drug business or not, haven't you?

Mr. OLNEY.—We object to that on the same ground as above stated, and on the further ground that the question itself shows that it is not a matter for expert testimony; it is for the Court to determine.

X. Q. 68. (By Mr. MILLER.)—I will put the question in this way, Mr. Redington: suppose you wanted a laxative medicine to cure yourself of constipation, and you went into a drugstore and you saw a bottle labeled "Syrup of Figs," and you had never seen or heard of such a medicine before as that, but you knew of the popular impression that figs possessed laxative qualities, now what would be the impression that would be conveyed to your mind under such circumstances as that, when a dealer

handed you a bottle of complainant's medicine marked "Syrup of Figs," and told you it was a good laxative?

(Objected to as not cross-examination, and not related to anything brought out in the examination in chief.)

A. I should think he was giving me what I went in to buy, a bottle of laxative medicine.

X. Q. 69. My question meant, though, what you would conclude, if anything, with regard to the presence or absence of figs in the medicine?

A. If I had looked at it and saw "Syrup of Figs" on the label, I would conclude that there was syrup of figs in it.

X. Q. 70. Well, why would you conclude that?

A. I could not come to any other conclusion. I would conclude that syrup of figs was in it, if I knew nothing about the preparation.

X. Q. 71. I am assuming that you didn't know anything about the preparation. That, you say, would be the conclusion that you would come to under the circumstances? A. Yes, sir.

X. Q. 72. If you were to go into a drugstore and see a bottle labeled "Syrup of Rhubarb," what kind of syrup would you conclude was in that bottle?

A. I would conclude that it was what the label called it, "syrup of rhubarb."

X. Q. 73. If you saw a bottle labeled "Syrup of Orange," would you conclude that it had syrup of orange in it? A. That would be the conclusion; yes, sir.

X. Q. 74. If it was labeled "Syrup of Lemons" would you conclude that it has syrup of lemons in it

A. Yes, sir.

X. Q. 75. That would be the natural conclusion to be drawn from language of that kind on the article itself, would it not? A. From the label; yes, sir.

X. Q. 76. Suppose you went into a store and saw a bottle labeled "Syrup of Orange," and you wanted to buy some syrup of orange, and asked the dealer for it, and he handed you down a bottle, and you bought it and took it home, and found it was not syrup of orange, would you consider that the dealer had perpetrated a fraud on you for selling you something which was not syrup of orange?

Mr. OLNEY.—We object to that question as being an absurdity upon its face, and as incompetent.

A. Yes, sir; I should return it, thinking that he had given me a fraudulent article.

X. Q. 77. Now, if you went into a store and wanted a laxative medicine, and asked for a bottle of "Syrup of Figs," and he was to hand you a bottle labeled "Syrup of Figs," and it had no syrup of figs in it and no juice of the fig in it, would you consider the dealer had perpetrated an imposition on you?

A. I would have no way of determining whether there were any syrup of figs in it or not.

X. Q. 78. You would have to take his word for it?

A. Yes, sir; I would take what the label called for to be "Syrup of Figs."

X. Q. 79. If it turned out when you went home that there was no fig juice in it, and no syrup made from figs in it, then you would be imposed upon without knowing it, would you?

A. If I believed there was syrup of figs in the preparation when I bought it.



X. Q. 80. Well, a man who should see a bottle labeled "Syrup of Figs" would naturally conclude there was syrup of figs in it, would he not?

Mr. OLNEY.—That is objected to as immaterial and irrelevant and not cross-examination, and also because the question to which it relates supposed that he was in want of a laxative medicine and required it as a laxative medicine.)

A. Yes, sir.

X. Q. 81. Do you know what this "Syrup of Figs" of complainant is composed of? A. No, sir.

X. Q. 82. The formula, then, is a secret, I presume, is it? A. Yes, sir.

X. Q. 83. The constituents of it are also secret, are they?

A. I think they are. I know one of the ingredients that goes into it.

X. Q. 84. Which?

A. Senna. I know that senna is used.

X. Q. 85. Senna is the only one that you know of now, is it? A. Yes, sir.

X. Q. 86. The label of complainant's bottle says—no, the wrapper of complainant's medicine says, I believe, that it is composed of senna and aromatics and carminatives.

A. I believe that is the language, as near as I can remember it.

X. Q. 87. Do you know what the aromatics and carminatives are?

A. Mr. Queen has not enlightened me on that.

X. Q. 88. And you have not been able to discover what they are?

A. I have never sought to discover, I never tried it.

X. Q. 89. Have you ever tasted this medicine?

A. No.

X. Q. 90. If it were a fact that in one thousand gallons of medicine there was only one gallon of fig juice, now, as a chemist, can you tell me whether or not the taste of the fig juice in that mixture would be appreciable or could be detected?

Mr. OLNEY.—We object to that as not relating to any inquiry called out by the examination in chief, not proper cross-examination, assuming a fact is not in accordance with the testimony offered in the case.

X. Q. 91. (By Mr. MILLER.)—Will you answer the question, please? A. I don't know.

X. Q. 92. Is it your idea that buyers of this "Syrup of Figs" would be largely influenced in buying it by the fact that there is popular impression that figs have laxative properties? I refer to those people who don't know the actual constituents of the medicine, but are merely buying it because it is a well advertised laxative?

A. Well, I think many would buy it from the fact that they might consider that syrup of figs was in it. A good many would buy it because it is an extensively advertised preparation, and they come across it and buy it.

X. Q. 93. Is it your experience in the drug business that some people buy medicine simply because it is extensively advertised?

A. I think that is the way most our medicines are sold, through extensive advertising.

X. Q. 94. Is it not a fact that the name here on this label "Syrup of Figs," together with the various pictures that have been called to your attention, representing figs, would induce people to purchase the medicine under the belief that it was prepared in some way from fig juice?

Mr. OLNEY.—We object to that as incompetent, irrelevant and immaterial, and not proper cross-examination, and as calling for the opinion of the witness in regard to a matter on which he was not examined, and as calling for an opinion without a statement of facts.

A. They would probably believe, many of them would believe that syrup of figs was in the preparation.

X. Q. 95. (By Mr. MILLER.)—Did you know Mr. Queen about the time he was making this medicine up in Reno, Nevada?

A. Yes, sir.

X. Q. 96. Were you connected with him then?

A. What do you mean by "connected," Mr. Miller?

X. Q. 97. Well, in any of that business, or otherwise?

A. Well, I sold him goods at that time.

X. Q. 98. Were you acquainted with him about the time he selected this name "Syrup of Figs"?

A. That I don't know when the name was selected.

X. Q. 99. Can you give any reason why the name "Syrup of Figs" was selected as this trademark, which he has prepared, for designating and describing his medicine?

Mr. OLNEY.—We object to that as immaterial and irrelevant, and not proper cross-examination, and as calling for the opinion of the witness on a matter with regard to which it is impossible for him to know anything about.

A. I don't know why Mr. Queen selected that as a trademark.

X. Q. 100. (By Mr. MILLER.)—You have sold large quantities of this “Syrup of Figs” for complainant, have you not?                   A. Yes, sir.

X. Q. 101. For quite a number of years?

A. For ten years or more.

X. Q. 102. Have you any interest in the California Fig Syrup Company?

A. No, sir; except as buying and selling goods as any merchant.

X. Q. 103. You are not a stockholder in it?

A. No.

X. Q. 104. Have you ever sold any of Frederick Stearns & Co.'s goods?

A. Not that I know of. I think not.

X. Q. 105. You have never sold any of their fig syrup then?                   A. No, sir; I have never seen it.

X. Q. 106. Is it not a fact that there are very large numbers of fig syrups on the market at the present day?

A. I don't know of any, Mr. Miller, that are now being sold in this market, except the syrup that Mr. Michaels referred to, “Garfield Fig Syrup.”

X. Q. 107. Who is this other man you say that made fig syrup here in this city besides Worden?

A. A party by the name of Weck.

X. Q. 108. What is the name of his fig syrup?

A. “Fig Syrup,” I think.

X. Q. 109. Is it customary in the drug business, Mr. Redington, for a manufacturer to put out a medicine or preparation, and call it by a name which indicates that

it is composed of certain substances, when it is not composed of those substances?

A. No; I don't understand it is the custom.

X. Q. 110. Isn't it more a general custom to give it a name which shows that it is composed of certain substances?

A. No, I think not all. I think they simply look out for a name like "Kidney Cure," or "Sarsaparilla," or "Cough Cure," or "Blood Purifier."

X. Q. 111. Could you make a pure syrup from figs in just the same way as you would make a syrup from any other fruits?

A. I don't know; I am not a pharmacist, I could not tell you, Mr. Miller.

X. Q. 112. (Mr. ROWE.)—Mr. Redington, what did you mean by this expression in your affidavit, "I regard the name 'Syrup of Figs' or 'Fig Syrup,' as applied to that liquid, laxative, medical preparation as a name for a liquid laxative, a popular suggestion or a pleasant suggestion"? What did you mean by the phrase "popular suggestion or pleasant suggestion"?

A. Because it is the prevailing opinion that figs are laxative, and it was evidently to convey the impression that there were figs in that preparation.

X. Q. 113. You followed that by saying that it is deceptive? What do you mean by that expression?

A. Well, not deceptive, because I took it for granted that there are figs in that preparation.

X. Q. 114. Then you don't know whether it is deceptive or not as regards the public at large in purchasing this article?

A. No, sir, I don't know.

## Examination in Chief of

W. S. DREYPOLCHER, a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your age, Mr. Dreypolcher?

A. Thirty-nine.

Q. 2. Where do you live?           A. San Rafael.

Q. 3. Were you living in this city on the eighteenth day of May, last?

A. No, sir; I was living in San Rafael.

Q. 4. What is your business?

A. Advertising agent.

Q. 5. Do you know the drugstore that has the sign over it, "Schmidt's Pharmacy," situated on the southeast corner of Sacramento and Kearny streets?

A. Yes, sir.

Q. 6. What is the sign on the drugstore, do you know?

A. Well, I could not state what the whole sign is. I know that there is a sign "Schmidt's."

Q. 7. Were you in that store on the eighteenth day of May, 1897?           A. Yes, sir.

Q. 8. I show you a package marked "Exhibit T—W. S. Dreypolcher," and ask you if you have ever seen that package before?           A. Yes, sir.

Q. 9. Where did you first see it?

A. At Schmidt's pharmacy, at the corner of Kearny and Sacramento streets.

Q. 10. Is this endorsement on the back of it in your handwriting, "Bought by W. S. Dreypolcher, May 18,



Schmidt's Pharmacy, southeast corner of Sacramento and Kearny streets"?      A. Yes, sir.

Q. 11. Now will you state what took place when you bought that package.

A. I entered the store and asked for a package of "Syrup of Figs." He said "A small package?" and I said "Yes," and he wrapped up this package and gave it to me. As he handed it to me, I said "Is that syrup of figs made by the California Fig Syrup Company"?

Mr. MILLER.—We object to any conversation of this kind on the ground that the defendants were not there, or any of them, and they are not bound by any conversation that occurred between him and a third person.

Q. 12. (By Mr. OLNEY.)—Well, go on now and state what took place.

A. I said "Is that syrup of figs manufactured by the California Fig Syrup Company?" and he says "Yes," and he walked around behind (he was behind the counter), he walked around to another counter and he says: "I guess that is made in Louisville," and I says "That is what I wanted, 'Syrup of Figs' made by the California Fig Syrup Co." Then another man came up and says: "That is right; that is the stuff you want." That is the words he used, "That is the stuff you want. That is made by the California Fig Syrup Co.," and I says "Right here in town?" and he says "Yes; they have got a place out on Hayes street," and I took my package.

Q. 13. What did you pay for it?

A. Twenty-five cents.

Mr. MILLER.—I move to strike out the answer on the

ground that the testimony is entirely hearsay and utterly incompetent.

Q. 14. (By Mr. OLNEY.)—What connection, if any, did the man with whom you first talked have with the store?           A. Well, he seemed to be clerk there.

Mr. MILLER.—I move to strike the answer out on the ground that the witness does not know. He states that he seemed to be a clerk there.

The WITNESS.—Well, he was a clerk.

Q. 15. (By Mr. OLNEY.)—Was there anybody else in charge of the store at that time?

A. I did not see anybody else but these two men.

Q. 16. Now, this man that came in and spoke, did you see anything to indicate what his relation was to the store?

Mr. MILLER.—We object to that because it is not calling for a fact, but calling for a supposition.

A. I supposed that he was connected with it, being behind the counter.

Q. 17. (By Mr. OLNEY.)—Did he go behind the counter?           A. He was behind the counter.

Q. 18. And he was there all the time?

A. He was there all the time.

Mr. MILLER.—I notify counsel that I shall object to this deposition, on the ground indicated in our objections heretofore taken, namely, that the question is incompetent, irrelevant and immaterial. We have no question on cross-examination.

Mr. OLNEY.—Right in this connection, I offer this package in evidence, and ask that it be marked Exhibit "U."

Mr. MILLER.—We object to that package as incompetent, irrelevant and immaterial, on the same ground that we objected to the testimony of the witness.

(Marked “Complainant’s Exhibit U.”)

Examination in Chief of

A. B. SMITH, a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your name?           A. A. B. Smith.

Q. 2. What is your age?           A. Thirty-five.

Q. 3. Your residence?           A. San Francisco.

Q. 4. I show you a package which has on the back of it these words “May 14, 1897, 3 P. M. Paid twenty-five cents for this bottle at drugstore, southeast corner of Kearny and Sacramento streets, S. F., Calif. Small man, wearing pointed beard, sold to me.” Signed “A. B. Smith. Exhibit S. A. B. Smith.” I ask you if you have ever seen that before?

A. Yes, sir; I wrote that on there.

Q. 5. Now, will you state the circumstances under which you came into possession of that package?

A. I went into the drugstore, known as Schmidt’s or Val Schmidt’s—on the window was “Lucius Little, proprietor”—and asked for a bottle of “Syrup of Figs” from a short man, with gray hair and with a pointed beard, and he stepped around the counter, and got this bottle from among other bottles upon the shelf and handed it to me, and I asked him how much, and he said twenty-

five cents. I asked him where it was made and by whom. He said by the California Fig Syrup Co.

Q. 6. Did he mention the street?

A. I wanted to know where I could find them, because I wanted to see them, and he said—

Mr. MILLER (Interrupting).—We object to anything that the man said, and we interpose that objection to the testimony which the witness has heretofore given as well as to that which he is giving now, on the ground that it is incompetent, irrelevant and immaterial, and that the conversation was not had in the presence of the defendants or any of them, and therefore is not binding upon them.

Q. 7. (By Mr. OLNEY.)—Go on, now, with the conversation.

A. He told me that it was on Hayes street some place. I asked him if he didn't know the number. He said no, but that he thought it was in the three hundred block. I asked him if there was any other offices or branches. He said there was a branch in Louisville, Kentucky, and one in Chicago, and one in New York.

Q. 8. What did you do then?

A. I took the bottle and paid for it and went out. I took it away. I asked him at the same time if he didn't spend a good deal of money for advertising, and my recollection is that he said, "Yes, they do. They are big advertisers."

Q. 9. Was he the only one there in the store?

A. No, Mr. Little was behind the counter also.

Q. 10. Do you know Mr. Little?           A. Yes, sir.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. What was this man's name who said these things to you?

A. I don't know the man's name that said them.

X. Q. 2. Have you ever seen him before?

A. Not to my knowledge.

X. Q. 3. How did you happen to go there to buy this medicine?           A. By request of Mr. Queen.

X. Q. 4. You didn't go there of your own accord, then, to buy it for the purpose of using it as a medicine?

A. No, I didn't intend to use this particular bottle.

X. Q. 5. What did Mr. Queen request you to do in that regard?

A. He asked me to buy it and make this notice on it. That is, he asked me to make the written memorandum of it so that I would recognize it.

X. Q. 6. Did he tell you for what purpose he wanted you to buy that?

A. He told me that it was for the purpose of that this<sup>1</sup> was an infringement on his remedy.

X. Q. 7. And that he wanted the bottle as evidence of that fact?           A. Yes, sir.

X. Q. 8. So when you went in there and asked the clerk for a bottle of "Fig Syrup," and he handed this out to you, when you looked that it you saw that it was not Mr. Queen's preparation, did you?

A. No, sir; I did not.

X. Q. 9. Were you familiar with Mr. Queen's preparation?

A. I have heard of it, but I don't know that I ever got it in a package like that. I got it in a bottle, in a naked bottle. I should judge, by looking at that and knowing that Mr. Queen has a branch of a figtree on his label, I would have taken it for his remedy.

X. Q. 10. What is your connection with Mr. Queen?

A. I do business, sell him goods occasionally, and I have been a friend of his for quite a number of years.

X. Q. 11. What is your business?

A. Furniture business.

X. Q. 12. You say you sell goods for him?

A. To him, now and then, whenever he patronizes me, like any one else.

X. Q. 13. That is, he is one of your customers, is he?

A. Yes.

X. Q. 14. Where is your place of business?

A. 128-132 Ellis street.

X. Q. 15. How long have you known Mr. Queen?

A. About twenty years.

X. Q. 16. You have been a friend of his and he requested you to go and buy this thing for him, purchase this bottle, did he? A. He certainly did.

X. Q. 17. And you afterward took the bottle over to Mr. Queen, did you? A. To Mr. Olney.

X. Q. 18. His attorney? A. Yes, sir.

X. Q. 19. For the purpose of being used as evidence in this case, I presume?

A. Well, I presume so. I don't know. I presume that. I don't know what case or any case.

X. Q. 20. The situation was just about this, was it not—Mr. Queen said to you that they were infringing his



preparation, and that they were selling the infringement down at that drugstore, and he wanted you to go down there and buy a bottle of it, so as to use it as evidence in this case, and you went down there and asked for a bottle of "Syrup of Figs"?

A. I went down there and asked for a bottle of "Syrup of Figs," and they gave me that bottle.

X. Q. 21. And they gave you that bottle in that way, and he asked you to turn it over to him for purposes of evidence in this case?

A. He didn't ask me to turn it over to him. He asked me to give it to Mr. Olney, with my affidavit.

X. Q. 22. He asked you to turn it over to his attorney, did he?      A. Yes, sir.

X. Q. 23. What did you say? Did you do it then?

A. I took it to Mr. Olney's office on the fourteenth day of May, 1897.

X. Q. 24. What day was that?

A. May 14, 1897.

Mr. MILLER.—I notify the counsel that I shall move to strike out the deposition of this witness, on the same ground that I interposed to the deposition of Mr. Drey-polcher.

Mr. OLNEY.—I offer this package in evidence, and ask that it be marked Exhibit "V."

Mr. MILLER.—We object to that as incompetent, irrelevant and immaterial on the same grounds stated, and shall include it in the motion to strike out.

(Marked "Complainant's Exhibit V.")

(At the hour of 12:30, P. M., a recess was had until 2 P. M., when proceedings were had as follows:)

Examination in Chief of

LOUIS T. QUEEN, a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your age?           A. Thirty-three.

Q. 2. What is your business?

A. I am the superintendent of the manufacturing department of the California Fig Syrup Co.

Q. 3. How long have you occupied that position?

A. About twelve years.

Q. 4. That would be since 1886?

A. Since 1886, yes, sir.

Q. 5. Does the California Fig Syrup Co. use any figs in the preparation of its medicine, known as "Syrup of Figs"? If so, what quantities?

A. Yes, they have used them ever since I have been there, and in the proportion of ten pounds to one hundred gallons.

Q. 6. Has that been the invariable custom?

A. Yes, sir, the invariable custom.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. How do you prepare the figs, Mr. Queen, for use in your preparation?

A. Well, we cut them up and steep them in hot water, dissolve the soluble substance and press them out.

X. Q. 2. Then the residuum that is left is put into the medicine, I presume, is it? A. Yes, sir.

X. Q. 3. What parts of the fig do you dissolve in the water?

A. Well, the soluble parts—the sugar.

X. Q. 4. What I wanted to get at is, what are the soluble parts in the fig?

A. Well, there is an amount of sugar and mucilage contained in the fig.

X. Q. 5. Do you use the dried figs or the fresh figs?

A. The dried figs.

X. Q. 6. Where do you procure those figs from?

A. From wholesale houses in this city.

X. Q. 7. I understand you chop those up fine first and then put them in hot water? A. Yes, sir.

X. Q. 8. Do you put them in a press of any kind, so as to express the juice out of them?

A. Yes, sir.

X. Q. 9. And this juice that is expressed out of them in that way is put into the medicine, is it?

A. Yes, sir.

X. Q. 10. If you take, say one hundred pounds of dried figs in that way and prepare them, how much do you have left of the expressed substance?

A. Well, if it was evaporated down, there would be about sixty-five or seventy pounds in that preparation.

X. Q. 11. So that makes about sixty-five or seventy per cent then of the figs that go in? A. Yes, sir.

X. Q. 12. Is that in the form of a sugary liquid?

A. That is about the consistency of syrup, a thin syrup. Of course, this hot water makes it of the consistency of thin syrup.

X. Q. 13. The mixture that is made of hot water and the substance that is expressed out of the fig is a kind of a syrupy liquid, is it? A. Yes, sir.

X. Q. 14. A kind of sweet sugar, is it not?

A. Yes, sir; sweet and pleasant.

X. Q. 15. You have tasted it? A. Yes.

X. Q. 16. What does it taste like?

A. Well, it tastes very pleasant, something like flavored syrup, the flavor of figs.

X. Q. 17. About the same as water and sugar mixed together?

A. Yes, only it is flavored; it has the flavor of the figs.

X. Q. 18. Now, you take that matter then, thus produced, and put it in with the other substance in the medicine, do you? A. Yes, sir.

X. Q. 19. From ten pounds of the figs in the dried state, say, how many gallons of this syrup would you produce?

A. About six gallons.

X. Q. 20. You would then have six gallons of the fig syrup and one hundred gallons of the mixture, would you?

A. Yes, sir.

X. Q. 21. That would be about six per cent of the figs, would it?

A. It would be about six pounds of solid substance evaporated down. That is, five or six—I don't know exactly; about of the consistency of jelly.

X. Q. 22. What would be the consistency of jelly?

A. Well, the fig paste.

X. Q. 23. Then you put it into that form, do you?

A. No, sir; we have it more in a liquid form.

X. Q. 24. How do you get it in a liquid form?

A. By adding hot water, pressing it out. Then we generally evaporate it down to—

X. Q. 25. (Interrupting.)—If I understand you, in the first place you take the figs and chop them up fine, and put them in a press and squeeze them out as much as you can?

A. After adding hot water to dissolve the soluble substance.

X. Q. 26. You first chop them up, mix them with hot water and put them in a press? A. Yes, sir.

X. Q. 27. And then press out all you can by that process? A. Yes, sir.

X. Q. 28. And the substance that you get from that process, did you say was in a kind of jelly or paste?

A. No, in a thin, syrupy form.

X. Q. 29. A thin, syrupy liquid? A. Yes, sir.

X. Q. 30. And that is the fig syrup which you put into the medicine, is it? A. Yes, sir.

X. Q. 31. Now, how long have you known of a fig syrup being produced in that way; that is, by taking the figs and chopping them up and mixing them with water, and putting them in a press and extracting all the substance out of them that you can?

A. Well, just since I have been working for the company—twelve years.

X. Q. 32. Did you ever see any other fruit or substance tried in that way? A. No, sir.

X. Q. 33. Did you ever take prunes and chop them up fine, and mix them with water and put them in a press and extract the juice out of them?

A. No, I have not.

X. Q. 34. You never tried that with any other fruit either, did you? A. No, sir.

X. Q. 35. Now, you put other things in that medicine also to give it a taste, do you?

Mr. OLNEY.—I object to that as incompetent, irrelevant and immaterial, and not cross-examination. I have only asked him in regard to one thing.

A. Yes, sir.

X. Q. 36. (By Mr. MILLER.)—I notice that the labels say that you put into it aromatics and carminatives. That is correct, is it?

Mr. OLNEY.—We object to that question as incompetent, irrelevant and immaterial, and not proper cross-examination. I will state here, I have no objection to counsel making the witness his own, but I am going to protest and insist, when his testimony is read in Court, that those answers that have been called out not on proper cross-examination shall be deemed to be the testimony of the other side.

X. Q. 37. (By Mr. MILLER.)—That is a correct statement on those labels, is it?

Mr. OLNEY.—We object on the same ground and give the same notice.



X. Q. 38. (By Mr. MILLER.)—Will you answer the question, please?

A. I decline to answer, sir.

X. Q. 39. (By Mr. OLNEY.)—You can answer that question, if you know.

A. As far as I know, it is; yes, sir.

X. Q. 40. (By Mr. MILLER.)—What do you mean in pharmacy by the expression “Carminatives”?

Mr. OLNEY.—We object to that question on the same ground, and notify counsel that if the witness answers these questions upon his demand, that those answers must be deemed his testimony.

X. Q. 41. (By Mr. MILLER.)—Now, will you answer that question, please?      A. I decline.

X. Q. 42. On what ground do you decline to answer that question?

A. On the ground that it would be betraying a trade secret in stating the testimony.

X. Q. 43. I am not asking you to disclose any trade secret. I have asked you what is meant by the expression, “Carminatives,” which is referred to on your label. Can you answer that question?

(The same objection.)

X. Q. 44. In the first place, I ask you, do you know? You are not disclosing any trade secret by answering that question.

Mr. OLNEY.—That is objected on the same ground.

X. Q. 45. (By Mr. MILLER.)—Will you answer that question?      A. No, sir.

X. Q. 46. On what ground do you decline to answer that question?

A. Well, I can't explain it very well.

Q. 47. Have you been instructed by anyone before you came to give your testimony to decline to answer any questions, or to answer no questions relating to this matter?      A. No, sir.

X. Q. 48. Then, why do you decline to answer this question?      A. Well, I can't explain it very well.

X. Q. 49. All that you know about it is that you decline to answer the question?      That is all?

A. I don't know.

X. Q. 50. Do you know anything about this stuff called "Syrup of Figs," anyway?      A. I do.

X. Q. 51. You know all about how it is manufactured, do you?      A. Yes, sir.

X. Q. 52. You know what is put in it, do you?

A. Yes, sir.

X. Q. 53. Do you put any strychnine in it?

Mr. OLNEY.—I instruct you to decline to answer that question.      A. I decline to answer.

X. Q. 54. (By Mr. MILLER.)—On what ground do you decline to answer that question?

A. Well, I am instructed to decline, by counsel.

X. Q. 55. What do you mean by the word "Aromatics"?      A. Pleasant—

Mr. OLNEY (Interrupting).—Wait a moment. I instruct the witness that he can do just as he pleases about declining to answer that question. It don't appear that the witness has used the word "Aromatics" at all.

X. Q. 56. (By Mr. MILLER.)—Will you answer that question?      A. No, sir.

X. Q. 57. Why wont you answer that question?

A. I am instructed by counsel that I have a right to decline.

X. Q. 58. I know counsel has instructed you to that effect, but I want to know why it is you do decline. That is all I want to know. Will you answer that question?

A. What was the question?

Mr. OLNEY.—We object on the ground that it is not cross-examination, and on the further ground that the witness has not used the word “Aromatics.”

X. Q. 59. (By Mr. MILLER.)—Well, are you going to answer the question or not? A. No, sir.

X. Q. 60. You have seen these advertisements of complainant, have you not, in which it is stated that their compound consists of senna and certain aromatics and carminatives, together with white sugar? You have seen those advertisements?

A. I have seen such advertisements.

X. Q. 61. Now, I was referring to the expressions used in those advertisements, some of which have been offered in evidence here. Is it not a fact that the aromatics therein referred to, are put in for the purpose of giving a pleasant flavor or taste to the syrup of figs?

Mr. OLNEY.—We object to that as irrelevant and immaterial, and not cross-examination, and instruct the witness that he can answer the question or not, just as he sees fit.

X. Q. 62. (By Mr. MILLER.)—Now, then, will you answer that question? A. No, I decline.

Mr. OLNEY.—I object to that question and instruct the witness not to answer.

X. Q. 63. What aromatics are put in the medicine?

A. I decline to answer.

X. Q. 64. (By Mr. MILLER.)—What carminatives are put into the medicine?

Mr. OLNEY.—I make the same objection and give the same instruction.

A. I decline to answer.

X. Q. 65. (By Mr. MILLER.)—Is it a fact that the quantity of figs put into this medicine is sufficient to give the medicine a fig taste?

Mr. OLNEY.—I object to that as incompetent, irrelevant and immaterial, and not cross-examination, and as calling for the opinion of the witness on a matter that he has not testified to in chief, and about which he may or may not know. (To the witness.) Now, you can go ahead and answer that question.

A. I have never tried it without the figs, so I don't know.

X. Q. 66. (By Mr. MILLER.)—Have you ever tried it with the figs? A. I have.

X. Q. 67. Did you taste any fig in it?

A. I have not tried it alone with the medicine; I have tried it in the general combination.

X. Q. 68. Well, can you detect a fig taste in a bottle of medicine as it is now? A. I don't know.

X. Q. 69. Well, you have tasted the medicine, haven't you?

A. I have tasted the medicine. It tasted very much like figs.

X. Q. 70. Did you detect a fig in the medicine?

A. It tasted very much like it. I could not state that it was the figs.

X. Q. 71. When you use this expression "Syrup of Figs" on your medicine, you intend to indicate, do you not, that there is the juice or the extract or syrup made from figs, contained in it?

Mr. OLNEY.—We object to that on the ground that it is immaterial, irrelevant and incompetent, and not cross-examination, and as assuming as a fact that the witness has not testified to, namely, that he used the term "Syrup of Figs." (To the witness.) You need not answer that question unless you see fit.

X. Q. 72. (By Mr. MILLER.)—Will you answer that question? A. I decline to answer.

X. Q. 73. Does not the expression, "Syrup of Figs," mean and indicate that the medicine contains a syrup, made from figs or some extract from the fig?

Mr. OLNEY.—I make the same objection, and instruct the witness not to answer.

X. Q. 74. (By Mr. MILLER.)—Will you answer that question? A. I will not answer.

X. Q. 75. Do you know anything about putting the labels on this medicine? Do you have anything to do with them? A. Sometimes I do.

X. Q. 76. What do you have to do in this regard?

A. Well, I generally look after the work, and occasionally I do it myself.

X. Q. 77. You are the superintendent of the factory, are you?

A. I am the superintendent of the medicine room, the manufacturing department.

X. Q. 78. Now, when you use these labels containing the expression "Syrup of Figs" on them, what impres-

sion do you intend to convey to the purchasers of the article?

Mr. OLNEY.—We make the same objection, and instruct the witness that he need not answer.

A. I decline to answer.

X. Q. 79. You notice on these labels, do you not, some pictures representing—one picture on the front of the label, and another picture on each end, do you not?

A. Yes, sir.

X. Q. 80. What is that picture of figs on the label represent?

Mr. OLNEY.—I instruct you that that is not proper cross-examination, and you can decline to answer.

A. I decline to answer.

X. Q. 81. (By Mr. MILLER.)—What do the pictures on the end of the boxes represent?

Mr. OLNEY.—I give you the same instruction with regard to that.

A. I decline to answer.

X. Q. 82. Do you know why those pictures are put on there? A. I do not.

X. Q. 83. Do you know what impression they are intended to convey to purchasers?

Mr. OLNEY.—I object to that and instruct you not to answer. A. I do not.

X. Q. 84. (By Mr. MILLER.)—Have you ever heard of the fact that figs are laxative in their properties?

Mr. OLNEY.—We make the same objection to that question; it is immaterial, irrelevant and not cross-examination.

A. I decline to answer.



X. Q. 85. (By Mr. MILLER.—Why do you put any figs in this medicine?

Mr. OLNEY.—I object to that as not proper cross-examination, and instruct the witness to decline to answer.

A. I decline to answer.

X. Q. 86. (By Mr. MILLER.)—Why don't you put more figs in the medicine than you do?

A. I decline to answer.

X. Q. 87. Why don't you put less figs in it?

A. I decline to answer.

X. Q. 88. Why don't you make it without any figs?

A. I decline to answer.

X. Q. 89. Would not the medicine be just as good without figs as it is with them?

A. I decline to answer.

X. Q. 90. Do you know whether it would be just as good without them as with them? A. I do not.

X. Q. 91. Would not the medicine be just as good if you put so much honey in it, instead of putting this fig juice in it? A. I decline to answer.

X. Q. 92. If you would put just so much syrup of any other kind, instead of fig juice, would not the medicine be just as good?

A. I decline to answer.

X. Q. 93. Is it not a fact that sometimes you make this medicine without any figs in it?

A. Not to my knowledge.

X. Q. 94. Well, isn't it a fact that it is known around the manufactory that sometimes it is made without any figs in it at all? A. No, sir; it is not.

X. Q. 95. Haven't you known of its being manufactured without any figs in it?

A. Never, that I remember of.

X. Q. 96. Who else manufactures it besides yourself?

A. Well, Mr. J. B. Queen has had charge at times.

X. Q. 97. And who else?

A. He has had main charge of it when I was not here; while I was away at the eastern factory.

X. Q. 98. Now, isn't it a fact that on one or two occasions, or on some occasions when you could not get the figs handy, that you made up batches of the medicine without figs? A. Not that I remember of.

X. Q. 99. Isn't it a fact, that might have been done without your knowledge?

A. It might have been done at the eastern factory, when I was not there, as far as I know. I don't know that it was done.

X. Q. 100. If I were to show you a bottle labeled, "Syrup of Rhubarb," what would you suppose were the constituents in that?

Mr. OLNEY.—We object to that question on the same grounds, and instruct the witness that he may decline to answer.

A. I decline to answer.

X. Q. 101. (By Mr. MILLER.)—Did you ever hear of the syrup of rhubarb?

(The same objection.)

A. I decline to answer.

X. Q. 102. Did you ever hear of syrup of ipecac?

A. I decline to answer.

X. Q. 103. Did you ever hear of syrup of orange?

A. I decline to answer.

X. Q. 104. If I were to hand you a bottle, labeled "Syrup of Orange," what would you suppose were the constituents of it?

Mr. OLNEY.—I make the same objection. You may decline to answer any such foolish questions.

A. I decline to answer.

X. Q. 105. (By Mr. MILLER.)—Has there been any change in the formula for making this medicine since you started on it? A. I decline to answer.

X. Q. 106. You made it according to a certain formula when you started in 1886, did you not? A. I did.

X. Q. 107. Have you changed that formula since?

Mr. OLNEY.—You are not required to answer that question.

A. I decline to answer.

X. Q. 108. Will you state whether or not you have changed the proportion of the figs put into the medicine since you began to manufacture it in 1886?

A. No, sir; we have not.

X. Q. 109. In other words, you put in the same proportion of figs now that you did in 1886, when you began the manufacture of it, do you?

A. As near as I remember, we do.

X. Q. 110. Well, you ought to know. You are the one who makes it. I want to know the fact.

A. Shall I answer.

Mr. OLNEY.—Certainly, that is a proper question.

A. Well, we have not changed.

X. Q. 111. (By Mr. MILLER.)—Why did you hesitate to answer it?

A. I didn't know but what possibly I had forgotten some change that had been made. I don't remember of any.

X. Q. 112. Now, isn't it a fact that there was a change? A. Not that I remember.

X. Q. 113. Well, do you testify positively that there was no change?

A. No change, as far as I can remember.

X. Q. 114. Isn't it a fact that in this medicine there is only one gallon of the extract or juice of the fig to a thousand gallons of the medicine?

A. No, it is not a fact.

X. Q. 115. There is more than that, is there?

A. There is more than that.

X. Q. 116. How much more, or how much is it, how many gallons of fig juice are there in a thousand gallons of the medicine?

A. In a thousand gallons there is, I should judge, about seventy-five gallons.

X. Q. 117. Now, that proportion has been preserved ever since 1886, has it not? A. Yes, sir.

X. Q. 118. And you have not changed it since that?

A. No.

X. Q. 119. Now, in a hundred gallons of this medicine how many gallons of it is this syrup of figs?

A. About seven and one-half or eight gallons; something like that.

X. Q. 120. So that would make it from seven and a half to eight per cent, would it not?

A. I never figured it down that closely.

X. Q. 121. Is that amount of fig juice or syrup of figs,

or whatever you call it, sufficient to give the mixture a fig taste?                   A. I should think so.

X. Q. 122. (By Mr. ROWE.)—You stated the preparation of figs as one of the constituent elements of this preparation. Are there any other ingredients at all in it?

Mr. OLNEY.—I instruct you to decline to answer.

X. Q. 123. (By Mr. ROWE.)—You stated one of the ingredients. I think that is a proper question. I don't ask you what the others are.

Mr. OLNEY.—Oh, well, I don't object to that.

X. Q. 124. (By Mr. ROWE.)—Is there any other ingredient besides syrup of figs?                   A. There is.

X. Q. 125. You are familiar with that advertisement, are you, Exhibit "P"?

A. Yes, sir; I have seen the advertisement.

X. Q. 126. Is there any ingredient or constituent element of this preparation that means what is stated in this advertisement as "our method of so extracting the laxative properties of senna, without retaining the gripping principle?"

Mr. OLNEY.—Do you intend to follow that up by asking what the articles are?

Mr. ROWE.—I do not attempt to lay any foundation to secure the trade secret.

Mr. OLNEY.—With that understanding, I instruct the witness to answer the question. In that connection, I would state to the witness that if he does not know he should so say.

A. I don't know.

X. Q. 127. (By Mr. ROWE.)—You don't know any in-

redient of this medicine which counteracts the griping tendency or principle of senna?      A. I don't know.

X. Q. 128. Any ingredient that was put in for that purpose?      A. I don't know.

X. Q. 129. You are familiar with that package, Exhibit "A," marked in the—

A. (Interrupting.)—Yes, sir.

X. Q. 130. Now, it states on this wrapper that the juice of figs in the combination is to promote the pleasant taste. Is that a fact?

Mr. OLNEY.—I instruct you to decline to answer the question.

X. Q. 131. (By Mr. MILLER.)—Do you or not know that to be fact?      A. I decline to answer.

X. Q. 132. Do you, or do you not, know whether the juice of figs is in the combination, for the purpose of counteracting the griping principle or the acting principle of senna?

Mr. OLNEY.—I instruct the witness not to answer the question, unless counsel purposes to make the witness his own witness.

X. Q. 133. (By Mr. MILLER.)—Do you or do you not know whether any carminatives or aromatics are used in this preparation for the purpose of counteracting the griping property of the ingredient senna?

A. I decline to answer.

X. Q. 134. Do you or not know whether either one or the other, that is, the juice of fig of the one-hundredth part, or the carminatives and aromatics alone, would be sufficient to counteract the griping property of senna?

A. I don't know.



X. Q. 135. Do you or not know whether either one or the other would be sufficient to counteract the unpleasant taste of the other ingredients, so as to promote a pleasant taste? A. I decline to answer.

Mr. MILLER.—We give notice now, that at the proper time we shall move to suppress the deposition of this witness, on the ground that he has refused to submit himself to proper cross-examination.

Mr. OLNEY.—I shall be surprised if we ever hear of that motion again.

Further hearing adjourned, subject to notice.

Monday, Dec. 19, 10 A. M.

Counsel Appearing:

For complainant: Warren Olney, Esq.,

For respondents: John H. Miller Esq., and Purcell  
Rowe, Esq.

Examination in Chief of

CHARLES CURTIS WADSWORTH, M. D., a witness called on behalf of respondents; sworn.

(By the EXAMINER.)

Q. 1. What is your full name?

A. Charles Curtis Wadsworth.

Q. 2. What is your age, residence and occupation?

A. I am forty-nine years old, physician, I reside at 1104 Van Ness avenue.

Q. 3. (By Mr. MILLER.)—You are practicing your profession in this city, doctor? A. Yes, sir.

Q. 4. How long have you been practicing your profession?      A. In this city?

Q. 5. Yes, sir.

A. The better part of the last twenty-three years, I think.

Q. 6. Are you connected with any medical society of any kind here?      A. Yes, sir.

Q. 7. What society

A. The County Medical Society.

Q. 8. In what capacity?      A. Simply as a member.

Q. 9. You are a graduate of a regular medical institution, are you?      A. I am.

Q. 10. What place? What university?

A. Wooster, Cleveland, O; the medical department; Cleveland, O.

Q. 11. Are you familiar with any popular impression among people at large, regarding the laxative quality of figs?

A. I think that there is a general impression among people that they are laxative.

Q. 12. How long have you known of such a popular impression as that?

A. Oh, I think that would be difficult to answer; for some years, probably.

Q. 13. It is quite an old impression, isn't it?

A. It is an old impression, I think.

Q. 14. You may state what you know in regard to the laxative quality of figs as compared with other fruits.

A. Well, they are popularly supposed to be laxative, and people very frequently use them as a laxative in their green and dried state, eat them in quantities.

Q. 15. Now, if they are laxative, what are the laxative properties due to, according to the best authorities amongst physicians.

(Objected to on the ground that it is not yet proved that they are laxative, that the witness has not so said.)

Mr. MILLER.—I don't think, myself, that they are laxative, nor anybody else.

Q. 16. Just answer the question.

A. Well, so far as that is concerned, I don't think it has ever been determined that there was any specific quality, that is attributable to the fig, that is a laxative more than, perhaps, the mechanical one produced by the seeds and the skin or pulp.

Q. 17. By the mechanical action, do you refer to the mechanical action on the bowels?

A. Certainly, upon the bowels. I know of no other laxative qualities that the fig has.

Q. 18. (By Mr. OLNEY.)—Caused by the seeds and skin, doctor do you say, and the pulp?

A. The seeds and the skin and, possibly, the pulp, but the pulp is largely made up of the seeds, so probably the seeds.

Q. 19. (By Mr. MILLER.)—In your practice, doctor, do you ever come across any patients who have that popular idea, in regard to the laxative qualities of figs?

A. I think I have.

Q. 20. Just state what has been your experience in that regard?

A. Well, I don't think that I could specify any particular case in which I have an instance, but I have had

people frequently say to me that they eat figs as a laxative.

Mr. MILLER.—You can take the witness.

Mr. OLNEY.—No questions.

### Examination in Chief of

FREDERICK CHARLES KEIL, witness called on behalf of respondent; sworn.

(By Mr. MILLER.)

Q. 1. What is your full name?

A. Frederick Charles Keil.

Q. 2. What is your age, residence and occupation?

A. I am a pharmacist by occupation. My residence is No. 6 Waller street.

Q. 3. How long have you been engaged in your present business as a pharmacist?      A. Since 1885.

Q. 4. Where did you study the business, originally?

A. Practically I studied the business with a druggist in Copenhagen, Denmark.

Q. 5. When did you come to the United States?

A. 1872.

Q. 6. You have made the practice of this profession ever since you came here?      A. Yes, sir.

Q. 7. Where have you practiced it?

A. I practiced it in San Francisco and the city of New York.

Q. 8. In what way and to what extent, generally?

A. I was proprietor and manager of a retail drugstore here in 1875 up until 1892; after that I was with Clinton E. Worden & Co., in various capacities.

Q. 9. In what capacity did you work for Clinton E. Worden & Co.?

A. I worked as chemist, as a pharmacist, and doing detail work among physicians.

Q. 10. Do you know anything concerning the popular impression among people, regarding the laxative properties of figs?

A. The popular impression is that figs are laxative.

Q. 11. How long have you known of that popular impression?

A. About since the time that the fig syrup was first placed on the market.

Q. 12. What time was that?

A. That I don't remember exactly, but I think it was about 1880.

Q. 13. You have known of that popular impression among the people ever since 1880, have you?

A. Yes, sir.

Q. 14. If figs are laxative at all, what part of them is it, and in what way are they laxative, according to the best medical authorities?

A. As far as I know, there is no definite laxative property in them, but the laxative property is due to the insoluble mechanical action—the insoluble portions and the mechanical action of the same.

Q. 15. Now, to what part of the fig do you refer, when you speak of a mechanical action?

A. Probably the seed and the insoluble tissue, and the—well, the seed and the insoluble tissue, the seed and skin.

Q. 16. Is that mechanical action on the bowels of a person?      A. I presume it is, I don't know.

Q. 17. Do you know anything concerning the laxative properties of senna, and of medicines containing senna, as a principal ingredient?      A. Yes, sir.

Q. 18. That is well known in the medical profession, is it, among the druggists?

A. That is well known among the pharmaceutical profession. That is all that I can speak of; and the medical profession as well.

Q. 19. Have you any standard preparation containing senna as a laxative, given as a medicine?

A. There is confection of senna and there is compound infusion of senna and various syrups of senna, fluid extract of senna and solid extract of senna.

Q. 20. What is the confection of senna composed of that you refer to?

A. It varies, according to the various pharmacopias, but the United States pharmacopia—according to that it is composed of powdered senna leaves and the pulp of figs and aromatics and purging cassia. In the Universal Pharmacopia of 1832—

Mr. OLNEY (Interrupting).—I object to the witness stating what these pharmacopias state. The publications themselves would be the best evidence.

Q. 21. (By Mr. MILLER.)—Just go on.

A. In the Universal Pharmacopia of 1832, which I have a copy of, they first make a syrup of figs and licorice and sugar. They evaporate them, and add to it powdered senna and tamarind pulp and cassia.

Q. 22. Have you the exact formulas with you?



A. Yes, sir.

Q. 23. Will you please produce them. (The witness produces.)

A. Yes, that I have now, the "National Dispensatory" of 1879, page 447, top of page.

Q. 24. Just read what you find there.

Mr. OLNEY.—I suggest that the reporter take it down from the volume.

A. (Reading.) "Take of senna, in fine powder, 8 troy ounces; coriander, in fine powder, 4 troy ounces; purging cassia, finely bruised, 16 troy ounces; tamarind, 10 troy ounces; prunes, sliced, 7 troy ounces; figs, bruised, 12 troy ounces; sugar in coarse powder, 30 troy ounces; water, a sufficient quantity." Shall I give you the working formula?

Q. 25. (By Mr. MILLER.)—Yes, sir, just go right straight along.

A. "Place the purging cassia, the tamarind, the prunes and the figs in a close vessel with three pints of water, and digest for three hours by means of a water bath; separate the coarser portions with the hand and rub the pulpy mass first through a coarse hair sieve, and then through a fine one or through a muslin cloth; mix the residue with a pint of water, and, having digested the mixture for a short time, treat it as before and add the product of the pulpy liquid thus obtained; then by means of a water bath dissolve the sugar in the pulpy liquid and evaporate the whole until it weighs twenty-four troy ounces; lastly, add the senna and coriander and incorporate them thoroughly with the other ingredients while yet warm. The whole should weigh ninety-six troy ounces.

Mr. OLNEY.—Why not give that page to the reporter and let him copy it from the book?

Q. 26. (By Mr. MILLER.)—What are the medical uses for that confection that you have referred to?

A. It is used as a laxative and as excipient in purgative pills.

Q. 27. Is it used as a laxative, referred to in the pharmacopia?      A. Yes, sir.

Q. 28. How long have you known of this confection of senna?

A. Since about 1866 or 1865; since I entered the drug business.

Q. 29. In this formula what is the active or purgative ingredient?      A. Principally the senna.

#### Examination in Chief of

WILLIAM MARTIN SEARBY, witness called on behalf of respondents ; sworn.

(By the EXAMINER.)

Q. 1. What is your full name?

A. William Martin Searsby.

Q. 2. What is your age, residence and occupation?

A. I am sixty-three years of age; my residence is 605 O'Farrell street.

(By Mr. MILLER.)

Q. 3. How long have you practiced your profession as a pharmacist?      A. Nearly fifty years.

Q. 4. At what places?

A. First at Guildford, England, next at Norwich, England, then Victoria, British Columbia and, since 1866, San Francisco.

Q. 5. Are you acquainted with any popular impression amongst people at large regarding laxative qualities of figs? If so, state what you have observed in that matter.

A. I have observed that there is a general impression that figs are laxative.

Q. 6. How long have you known of such a popular impression amongst people?

A. Oh, almost from my boyhood; thirty or forty years all together.

Q. 7. Now, if figs have any laxative properties, to what are those laxative properties due, according to the best authorities?

A. The general impression among the best medical authorities is, I believe, that the laxative quality, whenever it is experienced, is due to the irritation produced by the fragments of the seeds, which have been broken in masticating.

Q. 8. You mean irritation upon the bowels?

A. Irritation upon the bowels, yes.

Q. 9. Are you acquainted with the properties of senna?

A. Yes, sir.

Q. 10. For what is senna primarily used in medicine?

A. As a purgative, a laxative.

Q. 11. Do you know of any formula for laxative in which senna is the main ingredient, or principal ingredient?

A. The old fashioned remedy called black draft, which is composed of senna and epsom salts; and the old fashioned Daffy's "Elixir" is a compound tincture of senna. That is the proper name of it. It is still used a good deal in Europe as a laxative; and senna tea has been made for a century, I suppose, by the common people and used both as a purgative and laxative.

Q. 12. Now, I hand you a book that is entitled "Pharmacopia Universalis," and ask you if that is your book and if you are familiar with it, and state what is it?

A. This is mine. I am familiar with this book. I have been using it more or less for twenty-five years or thereabouts. I have had this book in my possession that length of time.

Q. 13. When was the book printed, according to the title page?

A. 1845, the first volume, and 1846, the second. This is the second volume.

Q. 14. Is that a standard pharmacopia, or recognized as an authority amongst druggists and physicians?

A. Well, it is a compilation from a number of works recognized as authority in different countries.

Q. 15. It is compilation of various pharmacopias then, is it?

A. Yes, all the pharmacopias published at the time it was compiled.

Q. 16. That is why it is called the "Universal Pharmacopia," I presume, is it?      A. I presume it is, yes.

Q. 17. That is to say, it was a book in which all the other pharmacopias were made use of?

A. Yes, sir.

Q. 18. It is written in Latin, is it?

A. There are some German notes in it. The body of the text is in Latin, the notes in German.

Q. 19. Will you please look on page 691 and state what you find there regarding senna or any laxative of which senna is an ingredient?

A. There is a preparation on that page in which senna, figs, tamarinds and prunes are used.

Q. 20. Will you read the entire formula?

A. With sugar, coriander seed and licorice as flavoring materials.

Q. 21. Will you please read the entire formula, so that it can be copied into the records?

A. (Reading.) "Take of dried figs, 2 ounces; common water, 1 pound." That means about twelve ounces of our present way of computing the pounds. "Boil to half. Toward the end of the boiling add of sliced licorice root, half an ounce; press out the decoction strain and then expose the clear, decanted portion over a gentle fire until one-fourth part of it is made by evaporation, in which decoction, boiling hot, dissolve of white sugar, 5 ounces; tamarind pulp, 6 dralms; pulp of prunes, 1 ounce and a half; powder of senna leaves, 1 ounce; power of coriander seeds, half an ounce." That is the end.

Q. 22. Now, you say the basic ingredient of that compound is the senna which gives it its laxative properties, I understand?

A. Yes, the principal ingredient that has a medical property is senna.

Q. 23. What are those other things put in there for?

A. Under the impression that they were laxative—tamarinds, prunes and figs.

Q. 24. (By Mr. OLNEY.)—How do you know? You are asked now why they are put in?

A. Well, that is my own inference.

Mr. OLNEY.—You can only testify as to facts, not what you suppose was in the minds of others.

Q. 25. (By Mr. MILLER.)—Does the licorice in there give it any medicinal properties?

A. Not as I know of.

Q. 26. How about coriander seed?

A. That tends to prevent griping.

Q. 27. Senna, I understand, is griping in its effects when used alone, is it?

A. More or less; not always. It depends a good deal upon the condition of the patient, but sometimes it is griping.

Q. 28. And this coriander seed tends to counteract that griping, you say?

A. Yes. Aromatics of some kind are very often added to medicine to prevent griping, but one would never suppose that would be the object for which the coriander was added.

Q. 29. What is the name given in this "Pharmacopia Universalis" to the preparation of senna which you have just read?

A. Confection of senna, or elixir of senna. Some pharmacopias call it one and some call it the other.

Q. 30. What is the general method of preparing a fruit syrup in pharmacy, or a syrup made from fruit?



A. That depends rather upon the nature of the fruit. Ordinarily the juice of the fruit is bruised out, clarified, sometimes by boiling, or other process, and, when a clear juice has been obtained, sugar is then added to it and it is dissolved and the preparation is finished.

Q. 31. What are those syrups generally used for in medicine?      A. Well, fruit syrups you mean?

Q. 32. Yes.

A. For flavoring. I don't think just now of any fruit syrup that is used for any other purpose. There might be some, but I don't think of any just now.

Q. 33. What method is generally pursued in labeling those syrups after they are made? That is, what names are given to them?

A. They are ordinarily called syrup; for instance, syrup of raspberry, syrup of strawberry.

Q. 34. That is, the name is given according to the fruit from which the syrup is made?      A. Yes.

Q. 35. Now what is a syrup of raspberry?

A. It is a syrup made just as I now explained—by pressing out the juice of the ripe fruit, clarifying it and dissolving in it sugar. That makes a syrup from the fruit of raspberry.

Q. 36. That is called syrup of raspberry?

A. That is called syrup of raspberry.

Q. 37. Now is that same general plan pursued in making syrups of any other fruits?

A. So far as I know, it is. I don't know of any other syrup that is not made by practically that process.

Q. 38. And the name is given according to the fruit from which it is made?      A. Yes.

Q. 39. Do you know what are the ingredients of the medicine that is made and sold by the California Fig Syrup Company?

A. I have not any means of knowing. I don't know what it is made of.

Q. 40. You never analyzed it? A. No.

Q. 41. Did you ever hear of the ingredient being made public in any way so that you could know?

A. I have an impression that I saw a statement in public of what it was. I paid no attention to it, because those things are of no value to the average pharmacist.

Q. 42. Then you could not state now what the components of this syrup of figs are, I presume.

A. No, I could not.

Mr. OLNEY.—No questions.

#### Examination in Chief of

FREDERICK CHARLES KEIL (resumed).

(By Mr. MILLER.)

Q. 30. Mr. Keil, do you know of other formulas in the pharmacopia in which senna is the principal ingredient used as a laxative? A. In the Pharmacopia?

Q. 31. Yes.

A. There is compound infusion of senna, or black draft.

Q. 32. For what purpose is that used?

A. As a purgative and a laxative.

Q. 33. (By Mr. OLNEY.)—Black draft, do you call it?

A. Black draft; yes, sir.

Q. 34. (By Mr. MILLER.)—I now hand you a book entitled “Hager’s Manual of Pharmacy,” and ask you to turn to page 542, and state what you find there regarding a concoction used for laxative purposes.

A. I find something called “Marienbad Species,” or “Marienbad Tea.”

Q. 35. What are the ingredients there given?

A. Of senna they use fifty parts; select manna, 100 parts; common mallow flowers, polypodium root and licorice root, of each 12 and one-half parts; figs, 20 parts; white sugar, 25 parts, to make the species or tea. They are made by chopping them up.

Q. 36. What is it that is chopped up?

A. All the ingredients except the sugar. Probably the sugar also, because in those days they didn’t have granulated sugar; they had it all in loaves.

Q. 37. For what is that concoction used?

A. It is used, according to some authority, but in another book, for the patients at Marienbad, which is a medical resort where they drink the mineral water and live under strict regime.

Q. 38. What property does the senna impart to the concoction?

A. The senna imparts a mild laxative effect in this proportion.

Q. 39. What is the object of the other ingredients?

A. The object of the other ingredients are, I presume, to prevent griping and improve the taste. Manna is reputed also to have laxative effect.

Q. 40. What is manna?

A. Manna is an exudation from certain ash trees, principally obtained from Calabria, Italy.

Q. 41. What effect does the licorice root and the polypodium root have?

A. The licorice root sweetens it, the polypodium root, I believe, is inert.

Q. 42. You spoke of mallow flowers. What effect does that have?

A. No effect at all, except producing a mucilage.

Q. 43. What effect do the figs have?

A. In this case they may have a slight purgative effect or laxative effect, because as there present they are insoluble ingredients. They are there chopped. That again does not hold good, because they are strained out, presumably afterward when the tea is made. Therefore, the effect of the fig would be nullified.

Q. 44. (By Mr. OLNEY.)—Will you describe the name and date of the book?

A. It is Leipsic, 1875, Pharmaceutical Manual of Dr. H. Hager.

Q. 45. (By Mr. MILLER.)—I now hand you a pharmacopia, entitled "Pharmacopia Universalis," published at Wiemar in 1832, and ask you to turn to page 581, and see what you find there in regard to any preparation of senna when used for laxative purposes.

A. Under the heading of "Electuarion Senna," which is synonymous with confection.

Q. 46. (By Mr. OLNEY.)—Confection of senna, then?

A. It gives reference to all pharmacopias. Without cream of tartar. On page 581, I find a receipt: "Figs, 6 ounces; licorice root, 2 ounces; water, 4 pounds; cook un-

til the remnant is one-half; strain and express and to the strained fluid, add white sugar, 16 ounces; to the diluted syrup add tamarind pulp and prune pulp, 5 ounces of each; powdered senna leaf,  $4\frac{1}{2}$  ounces, and powdered anise,  $\frac{1}{2}$  ounce. Mix together, mix well." Official at that time in the Prussian, Hanoverian, Oldenburg and Polish pharmacopia.

Q. 47. (By Mr. MILLER.)—Now, for what is that medicine used?

A. Like all other confection of senna, it is used as a purgative and laxative, according to the dose.

Q. 48. What is the basic ingredient of that medicine so far as the laxative property is concerned?

A. Senna.

Q. 49. What are the other ingredients put in there for?

A. They are put in there for what we call corrigens.

Q. 50. Just explain what you mean by that term?

A. A corrigien, that is put in there to counteract any tendency to untoward effects, such as griping, etc., or it is put in merely as a flavoring.

Q. 51. Senna, I understand, then, has a griping effect, has it?

A. As a rule. It depends upon the quality of the senna leaf.

Q. 52. Then I will say sometimes it has a griping effect?

A. Sometimes it has a griping effect.

Q. 53. And these other substances you say are put in there, first for the purpose of correcting that griping effect, and secondly, for giving a flavoring to the medicine?

A. Yes. Since 1876, most senna has a griping effect—1886, I would say.

Q. 54. How do you prepare in pharmacy a medicinal syrup?

A. It is made in two ways. Where the fruit from which the syrup is made is very juicy, they are prepared by expressing the juice, clarifying that by some means and dissolving sugar in it. Where the syrup has to be prepared from a dry fruit such as poppy heads and poppy leaves, or figs or dry prunes, usually an infusion is made which is clarified by different means, and then the sugar is dissolved in it.

Q. 55. Now, taking up the first species of syrup referred to by you, those prepared from the fresh fruits, what syrups of that kind do you know of, and what are they used for?

A. There is pineapple, raspberry, strawberry and blackberry, principally. They are mostly used for flavoring, either medicinal preparations, household preparations or soda water.

Q. 56. Do you know of a syrup of figs made that way, and used for that purpose?

A. I don't think that syrup of figs usually is made from the juice. It may be made from the juice, but the remainder of the fig, after the juice is expressed, is subject to boiling, and the sugar is dissolved in the mixture of the expressed juice, produced by boiling with water.

Q. 57. For what is an article of that kind used?

Q. 58. (By Mr. OLNEY.)—State from your own knowledge. I assume that you have not seen it made, and you don't know how it is used.



A. I have made it.

Q. 59. (Mr. MILLER.)—What is the process of making it, as pursued by you?

A. The process of making it is chopping up the figs or the prunes or the poppy heads, as the case may be, and treating them with boiling water, with or without boiling. Boiling usually is supposed to destroy the flavor. The substance is then strained, and as a matter of economy, expressed. Then it is usually clarified by some means and sugar is added to it. That forms a syrup.

Q. 60. Is that the way in general that you made it?

A. That is the rule laid down for syrups made from dry substances.

Q. 61. How long ago did you make that?

A. I personally made it only once. That was about 1886; but I have no means of telling what it is used for.

Q. 62. 1886? A. 1886; yes, sir.

Q. 63. Did you label it anything, by any name?

A. All of our remedies there were labeled in Latin. It was labeled according to the compounds, syrup of *fici indicae*.

Q. 64. What does that mean in English?

A. It means syrup of Indian fig, or Oriental fig.

Q. Did you say that it was in 1886 that you made this?

A. It must have been about the year 1886.

Q. 66. Where was it?

A. It was in Copenhagen. The year 1888, I think it was. I can't say positively whether it was 1887 or 1888. I want to change that answer to 1866. I can't say positively whether it was 1867 or 1868.

Q. 67. Was it while you were learning the business of a pharmacist?      A. Yes, sir.

Q. 68. When did you commence to learn the business as a pharmacist?      A. 1865.

Q. 69. What is your age now?

A. I am very nearly forty-nine.

Q. 70. How long did you remain in Copenhagen, Denmark?      A. I remained until 1871.

Q. 71. Where did you go then?

A. I traveled through Europe.

Q. 72. When did you come to the United States?

A. In 1872.

Q. 73. You have been here ever since, have you?

A. Yes, sir.

Q. 74. Have you been back to Europe since then?

A. Not since then.

Q. 75. Now, going back to flavoring extracts made from fruits, I will ask you if you know of a flavoring extract made from the fruit of the fig?

A. I know a flavoring juice made from the fruit of the fig.

Q. 76. How is that made?

A. It is made partly by expression and partly by infusion.

Q. 77. Just give us a little more in detail the process.

A. If I was requested to make it, I would first get the fresh fig and express whatever juice there was in it, then the remainder of the fig, of the crushed fig or bruised fig, I would treat with lukewarm water and express that, and mix the two expressions together and clarify it in some way and bottle it.

Q. 78. Is such an article as you have just specified, a commercial article in this market?      A. Yes, sir.

Q. 79. For what purpose is it used?

A. Principally for soda water flavoring.

Q. 80. Is it used for flavoring in soda water in the same way that raspberry, strawberry, orange and lemon and those other flavoring matters are used?

A. Yes, sir.

Q. 81. Has it any other effect than a flavoring effect?

A. I hardly think so.

Q. 82. It has no medicinal effect?

A. It has no medicinal effect.

Q. 83. Is that made in the same way that the other flavoring matters are made, such as strawberry and raspberry, orange, and blackberry and so on?

A. Partly in the same way.

Q. 84. What is the distinction?

A. As a commercial saving, it is made by infusion, because it would not yield sufficient juice, the fresh fig would not yield sufficient juice to make it a commercially profitable article. It is, therefore, treated with water. In making that syrup for flavoring, we are only after the flavoring.

Q. 85. Now, what rule is usually pursued in giving a name to a flavoring extract made from fruit, for the purpose of designating it or distinguishing it from others?

A. It takes the name of the fruit.

Q. 86. Just state in general terms how strawberry syrup is made, such as is used in the flavoring extracts in soda water?

A. Flavoring juice and flavoring extract, I beg your pardon, is a different thing. Flavoring juice or fruit juice is made by first garbling the strawberries, taking out all unnecessary ingredients, such as sand and the little bottoms, as they are called, and green leaves; then the remainder is put in a press cloth, and subjected to very strong pressure by which the juice runs out. That juice is then put into bottles and sterilized by heat, and the bottles are corked carefully and sealed sometimes.

Q. 87. Now, is that the raspberry syrup that is used in soda water?

A. That is the strawberry syrup that is used in soda water.

Q. 88. And the same process in general is pursued in making the juice of other fruits that way, is it?

A. Yes, sir.

Q. 89. And then they are labeled as such and such a syrup, according to the fruit from which they are made?

A. From which they are made, yes; such and such a juice.

Q. 90. And you say that the juice is made in substantially the same way and is an article of commerce?

Mr. OLNEY.—He has not said that. I object to words being put into the witness' mouth.

Q. 91. (By Mr. MILLER.)—You may state whether or not a fig juice, made in substantially the same way, is an article of commerce.

A. I hardly think anybody would make a fig juice the same way, because it would not be commercially profitable.

Q. 92. It could be made in the same way?

A. It could be made in the same way; yes, sir.

Q. 93. As I understand it, the only reason they make it in a different way is for economy?

Mr. OLNEY.—We object to that, because there is no statement that it is made in a different way.

Q. 94. (By Mr. MILLER.)—Just go on and answer, Mr. Keil. A. Yes, sir.

Q. 95. Have you already described the way in which it is made? A. In which I suppose it is made.

### Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Mr. Keil, returning to this article which you made in Copenhagen in 1866, 1867, or 1868, I ask you if that was made under orders from any one?

A. That I don't know. I simply received the order from the head of the department to make it.

X. Q. 2. What were the ingredients of it?

A. Figs, water and sugar.

X. Q. 3. Now, how much of it did you make?

A. I made what would correspond to five pints.

X. Q. 4. What was done with it after it was made?

A. That I don't know.

X. Q. 5. Have you ever made any since that time?

A. No, sir.

X. Q. 6. Have you ever known of any to be made since that time, any similar product?

A. We make, down in the laboratory of Worden & Co., a fig juice for flavoring.

X. Q. 7. When did you commence to make that fig juice for flavoring? A. I never made it personally.

X. Q. 8. You never made it personally?

A. No, sir.

X. Q. 9. You know there is such a juice made for flavoring? A. It is in our catalogue.

X. Q. 10. Have you ever seen any of it?

A. I don't think I have.

X. Q. 11. So that you know nothing about it, except from the fact that it is in your catalogue.

A. It is in the catalogue.

X. Q. 12. Then, did you ever make any such flavoring juice in this country? A. No, sir.

X. Q. 13. Did you ever see it made? A. No.

X. Q. 14. You have been a druggist in this city for thirty years, haven't you?

A. Yes, sir; more or less.

X. Q. 15. In drugstores it is a habit to sell soda water, is it not? A. I never kept it.

X. Q. 16. Do you know that other druggists sell these fluid drinks, soda water?

A. There is not very much soda water sold in San Francisco.

X. Q. 17. Did you ever know of any flavoring article made of the juice of figs to be used, of your own knowledge? A. By inference, I do know.

X. Q. 18. But I am only asking what you know. You don't know it?

A. I am not a salesman; I don't know.

X. Q. 19. In your experience as a druggist, have you ever known of an instance of its being used?

A. Except that they must have used it for something—except what I made as apprentice.



X. Q. 20. Except what you made as an apprentice.

A. Yes.

X. Q. 21. I am talking about California, San Francisco. You have been here since 1872?

A. Except the last six years. I came to California in 1874.

X. Q. 22. You said you came to California in 1872, I understood you?

A. I came to the United States in 1872.

X. Q. 23. You had been in the drug business until you entered the employ of Worden & Co.? A. Yes, sir.

X. Q. 24. Continuously, were you not?

A. Yes, sir.

X. Q. 25. Now, during the time that you were in the drug business in this city, do you know of any flavoring extract being used made from figs, or that figs were a part of the ingredients?

A. Personally, I don't know.

X. Q. 26. Now, don't you know as a matter of fact that there is not enough of the quality in figs to make a flavoring extract of any value?

A. I do know. That is the reason that I termed it the process by which it is probably made.

X. Q. 27. You do know that there is not enough—what shall I call it—? There is no flavoring quality, not sufficient of flavoring quality in the figs to make it worth while to make a flavoring extract from it, is there?

A. I don't know that.

X. Q. 28. Don't you know that?

A. I don't know that.

X. Q. 29. Don't you know that there is very little in

the juice of the figs of any quality that would be sufficient to make a flavoring extract for commercial purposes?

A. I know, yes; but outside of pineapple, raspberry, strawberry and blackberry, there is very little flavor in the other juices, but yet they are sold.

X. Q. 30. You have never known of fig juice, however, to be sold?

A. Not personally; no, sir. But pardon me. I can continue on that question. The catalogue has been revised lately—

X. Q. 21. (Interrupting.)—You said you didn't make it yourself, or know anything about it except from the catalogue. I object to your continuing.

#### Redirect Examination.

(By Mr. MILLER.)

R. Q. 1. You said you only knew by inference, as I understand, that a flavor made from fig juice was used. What did you intend us to understand by that? What was the inference?

Mr. OLNEY.—We object to that as improper, irrelevant and immaterial. Inferences are not testimony.

A. I can make direct testimony. I can make direct testimony that in the revision of the catalogue, which will be published early next year, fig juice was retained among flavoring juices.

R. Q. 2. Did the last issue of the catalogue have fig juice among the flavoring juices?

A. Did the last issue have fig juice as flavoring?

R. Q. 3. Yes.           A. Yes, sir.

R. Q. 4. I hand you a book, purporting to be a catalogue of Clinton E. Worden & Co. I show you page 236.

Mr. OLNEY.—What is the date of the book? What is the date of the catalogue?

Mr. MILLER.—There is no date in it. 236.

R. Q. 5. And I also ask you to read into the record the list of flavoring juices printed there.

Mr. OLNEY.—Object to that as being incompetent, immaterial and irrelevant. If you want to put this in evidence, it is another matter.

A. (Reading.)—"Flavoring extracts and soda water requisites."

Mr. OLNEY.—Just hold on. I object on the ground that evidence cannot be made of a witness' reading extracts from a publication or price list.

R. Q. 6. (By Mr. MILLER.)—Proceed.

A. (Reading.)—"Flavoring extracts and soda water requisites. Worden's pure California fruit juices, champagne quarts, assorted as desired: pineapple, orange, blood orange, lemon, prune, crabapple, raspberry, blackberry, currant, apricot, pear, green gage, fig, strawberry, peach, cherry, nectarine, plum, quince, banana."

R. Q. 7. Now, what does that list mean? In other words, what is that list there intended to show?

Mr. OLNEY.—We object to that question on the ground that the list is not in evidence, and, were it in evidence, it would speak for itself what it is intended to show, and the testimony of the witness would not be competent to show what was intended.

R. Q. 8. (By Mr. MILLER.)—I will put the question in

a little different form. What is the object of putting this list which you have just read into that catalogue?

Mr. OLNEY.—We object to that as incompetent, irrelevant, and immaterial. It is not competent to any issue in this case. It makes no difference why or what is the reason anything is put into a catalogue made by the defendant.

R. Q. 9. (By Mr. MILLER.)—Just answer the question now.

A. The object of that list is to give the dealers in soda water a choice of flavors.

R. Q. 10. Are all those different ones there mentioned, manufactured by Clinton E. Worden & Co.?

Mr. OLNEY.—We object to that on the ground that the witness has already said that he did not know that this fig juice was manufactured by Clinton E. Worden & Co. All he knew was that it was in the catalogue.

A. If it was not in stock, it would not appear in a new catalogue.

Mr. OLNEY.—I move to strike that out as not responsive to the question, and as not evidence.

R. Q. 11. (Mr. MILLER.)—Are those things generally kept in stock, or are they made up just as ordered.

A. Yes, they are kept in stock. Champagne quarts, each dozen quarts nailed up in a box.

#### Recross Examination.

(By Mr. OLNEY.)

X. Q. 1. Have you seen this fig juice yourself in stock in the store? A. No, sir.

X. Q. 2. Then you don't know of your own knowledge that it is kept in stock?

A. I may have seen boxes labeled fig juice.

X. Q. 3. But you have never seen this article in stock in the store?

A. It would not keep if the bottle was opened.

X. Q. 4. Answer my question. You have never seen it in stock in the store?

A. I have never seen it in stock.

(At the hour of 12:30, P. M., a recess was had to 2:30, P. M., at which time proceedings were had as follows:)

#### Examination in Chief of

MORRIS HERZSTEIN, M. D., a witness called on behalf of respondents; sworn.

(By the EXAMINER.)

Q. 1. What is your name, age, residence and occupation?

A. My name is Morris Harzstein; my occupation is physician; my residence is San Francisco; my age is forty-four.

Q. 2. Mr. MILLER.—How long have you been practicing your profession?

A. Seventeen years or more in San Francisco.

Q. 3. At what place or places?

A. San Francisco.

Q. 4. All the time?

A. Well, I have practiced in Europe.

Q. 5. What did you graduate from?

A. The New York Medical College and the Frederick William University of Berlin, Germany.

Q. 6. What year did you graduate from the College of New York?      A. 1881.

Q. 7. Did you go to Europe immediately after that to study?      A. No, sir.

Q. 8. How long did you remain there?

A. Well, I remained in Europe about a year or more.

Q. 9. Were you studying medicine in Europe?

A. Afterward; yes, sir.

Q. 10. When was it that you were studying medicine in Europe?

A. In Europe? I finished my education in Europe, graduated from the University of Berlin in 1890, or 1891, I think.

Q. 11. Did you then come to California?

A. I was in California before.

Q. 12. You came to California?

A. I came back to California; yes, sir.

Q. 14. And you have been practicing your profession here ever since, have you?      A. Yes, sir.

Q. 14. Doctor, are you aware of the popular impression which exists among people in general, regarding the supposed laxative quality of figs?

A. People generally suppose figs to be laxative, but the laxative quality of figs is due to the irritation of the seeds and the skin produced on the intestinal canal.

Q. 15. How long have you known of such a popular impression among people?

A. Professionally, I have always known that. Prior to that I think mostly everybody has held the impression



that figs are a laxative; that is, the popular impression is such.

Q. 16. Have you ever had occasion to hear anything concerning a laxative medicine on the market, called the California "Syrup of Figs?"

A. Yes, I have heard of it.

Q. 17. Do you prescribe it in your practice for your patients?      A. I do not.

Q. 18. What is supposed to be the principal ingredient of that medicine?

A. Well, in a syrup of figs any laxative ingredients can be only from laxative remedies, such as senna.

Q. 19. In manufacturing medicine, if a person were to take figs in a dried state, chop them up fine, and then dissolve them in water and express out the juice, and put that into the medicine, would that fig juice add any to give any laxative property to medicine?

A. I don't think so.

Q. 20. Have you ever heard of any of your patients using this California "Syrup of Figs?"

A. Yes; people use the "Syrup of Figs" quite frequently and they are under the impression that it is a fruit—

Mr. OLNEY (interrupting).—We object to the answer the witness is giving, because it is not an answer to the question.

Q. 21. (By Mr. MILLER.)—Just go on and finish your answer.

Mr. OLNEY.—And we object on the further ground that the witness has no right to state what their impressions are. That they take medicine because they are un-

der such an impression. That he cannot state that of his own knowledge.

Mr. MILLER.—If a doctor don't know that, I don't know who does.

Mr. OLNEY.—I give notice that I shall move to strike all that out.

A. I know people use "Syrup of Figs."

Q. 22. (Mr. MILLER.)—Have you heard of many of you patients using it?      A. Yes, sir.

Q. 23. Have they told you why they use it?

(Objected to as incompetent, irrelevant and immaterial.)

Mr. MILLER.—Just answer the question.

A. Yes, they use it because they state it acts as a laxative.

Mr. OLNEY.—That is not in answer to the question.

Mr. MILLER.—I object to your interrupting the witness every time he starts to answer a question. You can object to a question or you can move to strike out.

Mr. OLNEY.—I shall move the Court to strike out that answer.

Q. 24. Mr. MILLER.—What have you done, doctor, in your practice in such cases as that, when your patients made those statements in regard to it?

A. I never allow my patients to use any patent medicines.

Q. 25. Well, why? Why is that?

A. For the very reason that I don't know what they contain.

Q. 26. Have you ever forbid any of them using this "Syrup of Figs?"      A. I have.

Mr. OLNEY.—I object to that question as incompetent, irrelevant and immaterial, and shall move the Court at the proper time to strike out the answer.

Q. 27. Mr. MILLER.—What was your ground for doing that?

Mr. OLNEY.—I object to that as incompetent, irrelevant, and immaterial.

A. For the reason that it frequently produces griping or tenesmus of the bowels.

Q. 28. Mr. MILLER.—Such griping as that, I presume, would have a bad effect on the patient, would it not?

A. Well, it produces colic, particularly in children.

Q. 29. Now, when you have found any of them using this "Syrup of Figs," how, or in what way, have you induced them to stop using it?

Mr. OLNEY.—I shall make the same motion.

A. For the reason that I do not approve of the administration of any patent remedies, particularly remedies that I am not aware of the ingredients which they contain.

Q. 30. Are the ingredients of this "Syrup of Figs" made public, or are they secret?

A. I don't know.

Q. 31. You have never seen the statement of what the ingredients were, have you?      A. I have not.

Q. 32. Has senna a griping effect?      A. Yes, sir.

Q. 33. Have you ever been engaged in the matter of manufacturing or have you had any experience in the way of manufacturing medical compounds?      A. No, sir.

Q. 34. You are not a pharmacist?

A. I am not a pharmacist.

Q. 35. You are a physician?

A. I am a physician; yes, sir.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. I understand you to say, doctor, that you never have prescribed fig syrup? A. Yes, sir,

X. Q. 2. But you know that some of your patients have taken it? A. I do; yes, sir.

X. Q. 3. I also understand you to say that it frequently produces griping. Can you give any instance where it has that effect?

A. I can recall to my mind a number of times where children have been taking "Syrup of Figs," and it has produced colic or griping.

X. Q. 4. Will you give us the names?

A. I cannot recollect at this moment. I do not recall those to my mind at present; no, sir.

X. Q. 5. Was it in this city? A. Yes, sir.

X. Q. 6. In your practice?

A. In my practice; yes, sir.

X. Q. 7. Where you were the family physician?

A. Yes, sir.

X. Q. 8. Were you the family physician in those cases you speak of? A. Yes, sir.

X. Q. 9. Can you give the name now of a single family where that effect was produced?

A. I cannot; no, sir.

X. Q. 10. How long ago was it?

A. Oh, it has been some three months ago, to my knowledge. And it happened prior to that.

X. Q. 11. When? A. A number of times.

X. Q. 12. When?

A. I can't recollect the dates nor the months.

X. Q. 13. The last time, you think, was about three months ago?

A. The last time, I think, was about three months ago; yes.

X. Q. 14. Now, who was there?

A. I don't remember, because I have a very large family practice, and it is impossible to remember whose child is sick.

X. Q. 15. Now, you say that you had an instance of that before? A. Yes, sir.

X. Q. 16. How long before?

A. I don't remember the time, the exact time.

X. Q. 17. I suppose that any cathartic will produce griping where the bowels or intestinal canal is in a tender condition, will it not?

A. Yes; any cathartic will produce griping where the bowels are in tender condition, but sometimes it will produce griping where the bowels are not in a tender condition.

X. Q. 18. The extent of griping depends very largely upon the condition of one's bowels?

A. Not necessarily.

X. Q. 19. Whether they are sensitive?

A. Not necessarily, because some individuals are very sensitive to the average cathartics, while others are not.

X. Q. 20. Now, there is a good deal of difference be-

tween people in regard to their sensitiveness and the effect of cathartics?      A. Certainly.

X. Q. 21. There is a good deal of difference between people in regard to the beneficial effect of a cathartic, is there not? That is, to use the same cathartic will not always act with equal benefit upon all persons?

A. Well, yes, cathartics will not always act alike on the same individual.

X. Q. 22. Isn't there a great variation in the effect of cathartics upon different individuals?

A. Yes, certainly. It depends all upon the amount of cathartics they take.

X. Q. 23. Well, then, it depends upon the amount of cathartic they take, and not upon the individual, does it?

A. Well, it depends upon both.

X. Q. 24. Haven't you found this to be the fact in your practice—that you have to vary your extracts in accordance with what you know of the individual's constitution or the state of his health?      A. Certainly.

X. Q. 25. And haven't you found that at one time one cathartic would be good for a certain man, and at another it would not be good for him; that it would depend upon his condition?

A. It depends upon his health, certainly.

X. Q. 26. You have found that variation?

A. Yes, sir.

X. Q. 27. You have found that variation still greater in the case of women, have you not?

A. I can't say that.

X. Q. 28. Now, have you found it still greater in the case of children?      A. No, sir.



X. Q. 29. You have not? A. No, sir.

X. Q. 30. But you say that children and men are about the same so far as the variableness of the cathartic is concerned?

A. I think all individuals vary at time.

X. Q. 31. They vary, all individuals vary at times, but you don't see any difference between women, and the men and the children?

A. I don't see any difference as to its variation, only as to the doses.

X. Q. 32. Now, I understand that you don't use any patent medicines at all? A. I do not.

X. Q. 33. Have you ever prescribed anything, any medicine, that you don't know the ingredients of?

A. Not to my knowledge.

X. Q. 34. Have you ever prescribed listerine?

A. Yes, I have prescribed listerine.

X. Q. 35. Have you ever prescribed sulphonal?

A. Yes, I have prescribed sulphonal?

X. Q. 36. Have you ever prescribed bromidia?

A. I have not prescribed bromidia, not to my knowledge.

X. Q. 37. Have you ever taken the trouble to analyze "Fig Syrup?" A. I have not.

X. Q. 38. Do you take the medical journals?

A. I do.

X. Q. 39. Do you ever observe the advertisements in them? A. Sometimes.

X. Q. 40. Have you not noticed in the different medical journals advertisements, showing what the principal ingredients of "Syrup of Figs" are? A. No, sir.

X. Q. 41. You have never seen it?

A. Don't think I have.

X. Q. 42. Has any agent of the California Fig Syrup Company ever called upon you and stated what the principal ingredients were? A. I don't remember.

X. Q. 43. Do you know whether as a matter of fact they have been in the habit of calling on physicians and directing their attention to this medicine?

A. Not that I know of.

X. Q. 44. Where do you say your office is?

A. 801 Sutter street.

X. Q. 45. How long have you been there?

A. I have been at 801 Sutter street, some seven or eight years. I have lived on Sutter street, twelve years—twelve or fourteen years.

X. Q. 46. When the term "Syrup of Figs" is used, you know what it refers to, do you?

A. Well, I do and I do not; not being acquainted with the ingredients. I—

X. Q. 47. (Interrupting.)—Well, you know it refers to this medicine we have been talking about, manufactured by the California Fig Syrup Company?

A. Whenever I have heard of it being used, when patients are using it, I have heard it used in connection with a laxative.

X. Q. 48. But it refers to this particular article, does it not? A. I suppose so.

X. Q. 49. You have no reason to suppose otherwise, have you? A. I don't know.

X. Q. 50. When one of your patients speaks of "Syrup of Figs" or "Figs Syrup," you know what he refers to?

A. Yes, I suppose he means the fig syrup which is on the market.

X. Q. 51. And put up by the California Fig Syrup Company?

A. Well, that I don't know, because I don't—

X. Q. 52. (Interrupting.)—You know it is advertised as medicine?

A. I don't know whether it is the California, or any other fig syrup.

X. Q. 53. You know it is advertised as a laxative medicine, do you?

A. Yes, sir; I know that there is such a remedy advertised.

X. Q. 54. And it is that medicine that you think has produced griping in some cases? A. Yes, sir.

X. Q. 55. Have you found that the general effect was that amongst your patients?

A. It has been the effect in a number of cases, as I have mentioned.

X. Q. 56. Now, if Dr. McNutt and Dr. Winslow, and other leading physicians, and Dr. Anderson and some other leading physicians in this city should say that they had found it an excellent cathartic in their practice, would you not be inclined to hesitate about forming an opinion that it would produce a griping effect.

A. It would not change my opinion at all.

X. Q. 57. It would not? A. No, sir.

Mr. MILLER.—We object to that on the ground that those doctors did not testify to anything of that kind.

X. Q. 58. (Mr. OLNEY.)—That is just what they did testify to.

A. It would not change my opinion at all if Dr. Anderson or Dr. McNutt would state so.

X. Q. 59. You have never taken it yourself?

A. I have not; no, sir.

### Redirect Examination.

(By Mr. MILLER.)

Q. 1. Doctor, you have a very large practice, have you not?

Mr. OLNEY.—We object to that as incompetent, irrelevant and immaterial. A. Yes, sir.

R. Q. 2. What are your office hours for patients who come into your office to be treated?

A. From 11 to 1 and from 3 to 5; 3 to 6 usually.

R. Q. 3. Can you give us a general idea about the number of patients that pass through your office per day, during those office hours?

A. During my office hours?

R. Q. 4. Yes, sir.

A. Oh, sometimes thirty or forty, or more.

R. Q. 5. Have you a very large family practice, besides? A. Yes, sir.

R. Q. 6. You are practicing among families during the remainder of the day, are you? A. Yes, sir.

Examination in Chief of

ABRAHAM LEWIS LENGFELD, witness on behalf of respondents; sworn.

(By Mr. MILLER.)

Q. 1. Please state your name, age, residence and occupation?

A. I have given my name, Abraham Lewis Lengfeld. My age is forty-eight; my residence is 1120 Post.

Q. 2. What is your occupation?

A. My occupation is a druggist.

Q. 3. Where is your drugstore?

A. I have two of them, the principal one is at 203 Stockton street, near Geary. The other one is at 803 Sutter street, near Jones.

Q. 4. How long have you carried on the drug business?

A. Since the early part of 1872.

Q. 5. Did you graduate as a physician, also?

A. I am a graduate of medicine.

Q. 6. From what college?

A. The medical department of the University of the Pacific.

Q. 7. Have you practiced any as a physician?

A. Never.

Q. 8. Have you confined yourself to the drug business?

A. I have never practiced as a physician, if I except the time that as a student we were required to attend exercises. My attention has been entirely confined to the drug business.

Q. 9. Are you aware of any popular impression among

people at large regarding the supposed laxative properties of figs?

A. Well, I believe that people at large believe that it is a laxative.

Q. 10. You have heard of that impression among people, have you?      A. I have.

Q. 11. Now, if there are many laxative properties in figs, what are those laxative properties due to, according to the best medical authorities?

A. Due to what is generally termed the skin and the seeds.

Q. 12. Is that caused by the irritation or the mechanical action of the skin on the intestinal canal?

A. Dr. Bruton, who is claimed to be the leading English authority on pharmacology and therapeutics, classes figs with bran, oatmeal, and other undesirable substances, claiming that its laxative properties are entirely due to the small seeds, or so-called small seeds—that is not the strict name—present in the fig.

Mr. OLNEY.—I shall move to strike out that answer as not responsive to the question, not evidence.

Q. 13. Mr. MILLER.—Now, if a medicine were prepared, which amongst other things present, figs in a dried state were used, chopped up very fine, and then dissolved or mixed with warm water, and expressed or squeezed so that the juice was taken out of them as much as possible, and that juice put into a medicine, would that fig juice so put into the medicine add any laxative property to the medicine?

A. I think not.

Q. 14. The laxative part of the medicine being the



seed, having been left out of the compound, and only the juice itself having been put in, it would be the same as any other fruit juice, and you think that would not produce any laxative properties in the medicine?

A. I don't think it would act as a laxative if the seeds and the skin were left out.

Q. 15. Did you ever run across this medicine called the "Syrup of Figs" that is prepared and put up by the California Fig Syrup Company?

A. I handle it. Excuse me—I don't handle; I deal in it and have it on hand.

Q. 16. Do you know what the formula is by which it is made?

A. I do not. I have seen published formulas in the various pharmaceutical journals, but have paid no particular attention to them.

Q. 17. You don't know what the constituents are?

A. Not of my own knowledge.

Q. 18. You handle it, I presume, the same as you would any other patent medicine?

A. The same that I would anything else that is called for over the counter.

Q. 19. What is the general method pursued with fruit syrups, such, for instance, those that are used in soda water or for flavoring purposes? How are they usually made?

A. I cannot answer. I have had no personal experience in them. I merely know the theoretical method. If that is satisfactory, I can give that.

Q. 20. What is the theoretical method?

A. We are supposed to crush the fruit, sometimes to allow it to ferment slightly, put it in a press and express the juice, add sufficient sugar to it to make a syrup of it, if necessary, adding some preservative to keep it from fermenting.

Q. 21. What do you do generally in regard to the name of the syrup thus produced? How do you label those 'syrups'?

A. According to the fruit from which it is made, unless it is put up as a proprietary article, of course.

Mr. OLNEY.—No questions.

#### Examination in Chief of

WINFIELD SCOTT MORRISON, a witness called on behalf of respondents; sworn.

(Mr. MILLER.)

Q. 1. Please state your name, age, residence and occupation.

A. My name is Winifield Scott Morrison. My residence is 659 Castro street. By occupation, I am superintendent of the laboratory of Clinton E. Worden & Co.

Q. 2. How long have you occupied that position?

A. About sixteen years.

Q. 3. In general, what are your duties there?

A. Well, generally, superintendent of the various operations going on in the laboratory.

Q. 4. What experience have you had in the matter of preparing pharmaceutical preparations?

A. Well, I have had a great deal of experience of that myself, as well as superintending others in doing it.

Q. 5. Do they manufacture a great many of those preparations at Clinton E. Worden & Co.'s establishment?

A. Yes, sir.

Q. 6. Have they manufactured there an article called "Fig Juice" ?

A. Yes, sir.

Q. 7. Just state how that is manufactured?

A. The fresh ripe figs are ground, and then the pulp is put through a press and expressed, the juice is strained, bottled and sterilized.

Q. 8. I presume the seeds and the rind and the skin is all removed?

A. Yes, sir.

Q. 9. And only the juice is the result?

A. And only the juice is the result.

Q. 10. Do they put up that juice?

A. They put it up in quart champagne bottles.

Q. 11. Does this small bottle, which I hand you now, labeled "Fig Juice," contain a sample of that article?

A. Yes, sir; I took that from a bottle in stock just before I left the laboratory today.

Q. 12. What is done with it after that?

A. Well, it is sold to the druggist in that shape; to the druggists or candy men or whoever uses it.

Q. 13. What is it used for?

A. It is used for making fig syrup.

Q. 14. What else is it used for?

A. For making any preparation that they may wish to use it in, anything that they may desire.

Q. 15. It is used in soda water, is it?

A. Yes, sir; it is used in soda water chiefly.

Q. 16. Now, what do they do to it to prepare it for use—say, with soda water, for instance?

A. They either mix it with simple syrup or add sugar to it. Then they dilute it with a little water. The usual way is to mix one part of juice with six parts, five parts syrup, five or six.

Q. 17. That makes a fig syrup, then, does it?

A. That makes a fig syrup.

Q. 18. And it is used as a flavoring extract in soda water, just syrup of raspberry is used?

A. Yes, sir.

Q. 19. How long has the firm of Clinton E. Worden & Co. been manufacturing fig juice in this way that you have testified about?

A. Well, at least ten years; exactly, I cannot tell.

Q. 20. Do you keep it in stock?      A. Yes, sir.

Q. 21. It is a staple article, is it?

A. It is a staple article. It has been in stock for ten years, to my knowledge.

Q. 22. Now, when you come to use this in the manufacture of the laxative fig syrup, what do you do?

A. Well, we would mix it with the other ingredients of the syrup.

Q. 23. What does this bottle contain that I now hand you, labeled "Fig Syrup," for soda fountain use?

A. It contains one part of fig syrup and five parts of simple syrup mixed together.

Q. 24. In other words, it contains what is found in this first bottle denominated fig juice, plus the simple syrup added to it?      A. Yes, sir.

Q. 25. And the proportions used are one to five?

A. The proportions are one to five.

Mr. MILLER.—We offer these two bottles in evidence and ask that the first one be marked “Respondent’s Exhibit No. 1,” and the fig syrup bottle be marked “Respondent’s Exhibit No. 2.”

(Marked respectively “Respondent’s Exhibit No. 1” and “Respondent’s Exhibit No. 2.”)

Q. 26. Just explain generally the process of manufacture of simple syrups?      A. Simple syrups?

Q. 27. Yes, sir.

A. They are made by adding seven pounds of sugar to four pints of water, and mixed together and dissolved by heat. That makes a simple syrup.

Q. 28. Now, if you desired to make any special kind of flavoring syrup from fruits, what would you do?

A. Mix the juice of that fruit with the simple syrup.

Q. 29. Say you wanted to make strawberry syrup for a soda fountain, what would you do?

A. Take one part of strawberry juice and five or six parts of simple syrup.

Q. 30. How do you get the strawberry juice?

A. By grinding the fruit and expressing it in a press.

Q. 31. Is that the same process that you explained in regard to the fig?

A. Yes, sir; exactly the same, sir.

Q. 32. Then, if you have got that juice, you put it into a simple syrup and you call it strawberry syrup?

A. Yes sir.

Q. 33. Is that same process followed with all other fruits that were used?      A. Yes, sir.

Q. 34. What fruit syrups are put up by Clinton E. Worden & Co.?

A. We don't list a line of fruit syrups. We make on orders only.

Q. 35. As I understand, the fruit juices are manufactured to order and carried in stock and, whenever you desire to use them, then you manufacture the syrup from that, do you?      A. Yes, sir.

Q. 36. Now, what fruit juices do Clinton E. Worden & Co. manufacture in that way?

A. Raspberry, strawberry, pineapple, banana, orange, lemon—I can't name the whole list.

Q. 37. I now show you Clinton E. Worden's last catalogue, page 236, and ask you if that contains a list of fruit juices manufactured by the house?

A. Yes, sir.

Q. 38. Just read them off, will you?

A. (Reading.) "Pineapple, orange, blood orange, lemon, prune, grape, crabapple, raspberry, blackberry, currant, apricot, pear, green gage, fig, strawberry, peach, cherry, nectarine, plum, quince, banana.

Q. 39. Are all those fruit juices manufactured in the same way in which you have just testified?

A. Well, with very little variation; with one or two exceptions. Banana is made different, from necessity.

Q. 40. What others are made differently, if any?

A. None others. Banana is the exception.

Q. 41. With the exception of banana, then, the others are all manufactured in the same way that you have specified?      A. Yes, sir.

Q. 42. Have you had anything to do with the manufacture of this laxative fruit syrup—I mean fig syrup—that is in controversy?



A. That that is manufactured by Clinton E. Worden & Co.? Yes, sir.

Q. 43. What are the general constituents of that, if you remember? A. The laxative part is senna.

Q. 44. And what else do they put in it?

A. Sugar and flavors, essential oils.

Q. 45. With what degree of care was it manufactured?

A. It is always manufactured with great care.

Q. 46. What was the quality of the ingredients that were used in it? A. The best we could buy.

Q. 47. Have you ever had occasion to examine or note the fig syrup that is made by the California Fig Syrup Company? A. I have not examined it.

Q. 48. You have not analyzed it?

A. I have not analyzed it. I have examined it, as to flavor, etc., but I have not analyzed it.

Q. 49. How does it compare with the corresponding article made by Clinton E. Worden & Co.?

A. In some respects, it is somewhat similar to it, but in others it is not. The flavor is not the same.

Q. 50. I show you two small bottles, labeled "A" and "B," and ask you to examine and state what they are, if you know?

A. I made these two samples, but as to which is the one that contains the fig syrup, I cannot state now.

Q. 51. What is the difference between them?

A. One contains ten per cent of fig syrup made from dried figs, and the other is simple syrup in place of the fig syrup.

Q. 52. Both of them are the laxative articles?

A. Yes, both have the same laxative strength, or laxative property of senna.

Q. 53. The only difference between them is that in one of them you leave out the figs? A. Yes, sir.

Q. 54. Now, does that fig juice that is put in there add anything to its laxative property?

A. No, sir; not in my judgment.

Q. 55. What quantity or proportion of figs were used in the manufacture of the laxative, the fig syrup?

A. In this there is ten per cent. As to what we ordinarily use, I can't state off hand.

Mr. MILLER.—We offer these two bottles in evidence and ask that they be numbered Exhibits No. 3 and No. 4.

(The bottle marked "A" is marked "Respondent's Exhibit No. 3" and the bottle marked "B" is marked "Respondent's Exhibit No. 4.")

Q. 56. Are you aware of the popular impression that is among people at large regarding the supposed laxative qualities of figs? A. Yes, sir.

Q. 57. According to the best medical authorities, what is the laxative property of the fig, if it has any laxative property?

A. As far as I know, it has been attributed to the mechanical laxative effect of the seeds and rind.

Q. 58. Then the pure fig juice, itself, would not be laxative, any more than any other syrup, any other fruit juice?

A. I would not be able to state on my own authority as to that. I am not a physician.

Q. 59. When did you commence to study pharmacy?

A. About fifteen years ago.

Q. 60. Had you ever heard of this laxative preparation, called California Fig Syrup, before that time?

A. No, sir.

Q. 61. It is only since you have been in business since you have heard of it?      A. Yes, sir.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. I understand you that this is an article that you say you have manufactured and had in stock for ten years?      A. No, sir; two.

X. Q. 2. How long have you been working for Clinton E. Worden & Co.?

A. I can't state exactly; something over twelve years.

X. Q. 3. Do you know how long they have been in business in this city—that concern?      A. No, sir.

X. Q. 4. During the time, or during the twelve years or more that you have been with them, have you been working here for them in the city all the time?

A. Yes, sir.

X. Q. 5. I suppose you kept account of all articles manufactured, did you not?      A. Yes.

X. Q. 6. Have you ever manufactured any syrup of strawberry? If you have, you kept an account of it, I suppose?

A. Well, yes; but I can't say that we kept an account of everything of that description.

X. Q. 7. But did you manufacture any large quantity of these fruit syrups?      A. Not, syrup; no, sir.

X. Q. 8. You did not?      A. Juices.

X. Q. 9. Juices. Did you manufacture them in large quantities?

A. Yes, sir; we manufacture them in large quantities.

X. Q. 10. Did you keep count of what you manufactured? A. Yes, sir.

X. Q. 11. Did you keep an account of what you manufactured of this fig juice?

A. I can't say that it is all down; no, sir.

X. Q. 12. Well, that is the regular course of business, to keep an account, is it not? A. Yes, sir.

X. Q. 13. And, so far as you know, a record was kept of all that was done? A. Yes, sir.

X. Q. 14. Who keeps that record? A. I do.

X. Q. 15. Do you keep it personally, or is it kept under your supervision? A. I keep it personally.

X. Q. 16. That is, you make entries in a book, yourself, do you? A. Yes.

X. Q. 17. Now, have you the book in which you made these entries, showing the amount of fig juice that you manufacture?

A. I can't say that I have it from the beginning.

X. Q. 18. What is that?

A. I can't say that I have back to the beginning of all that is manufactured?

X. Q. 19. How far back have you got them?

A. I can't say without looking it up.

X. Q. 20. Will you produce to-morrow the books that you have? A. I could; yes, sir.

X. Q. 21. How many have you got?

A. I can't state.

X. Q. 22. Well, what have you done with them? What do you do with them? Do you keep them under your own supervision, your own personal supervision?

A. Yes, sir.

X. Q. 23. Will you produce all that you have got?

A. I can; yes, sir.

X. Q. 24. I give you notice now that I shall want to examine you on those books to-morrow morning. Now, you have manufactured this fig juice, you say, and kept it in stock. Have you sold any of it? A. Yes, sir.

X. Q. 25. Now, when you make a sale of fig juice, you keep a record of it, do you?

A. I don't know. I do not; no, sir.

X. Q. 26. You do not?

A. Well, the books of the concern might show it. I don't know.

X. Q. 27. That you don't know? A. No, sir.

X. Q. 28. Now, do you keep an account of the materials that you use in the manufacture of an article like fig juice? A. Not beyond a certain time; no, sir.

X. Q. 29. Not beyond a certain time? What time is that? A. Probably a year.

X. Q. 30. Probably a year back?

A. Yes, sir. After they become too old, they are discarded.

X. Q. 31. What is the quantity of this fig juice that you have manufactured and kept in stock?

A. I can't state as to that.

X. Q. 32. You can state in round numbers, can't you? One gallon, two gallons?

A. Well, it is more than that; somewhere in the

neighborhood of twenty gallons, or twenty-five gallons. I could not say positively.

X. Q. 33. Is that the total amount that the concern has manufactured? A. No; I could not state.

X. Q. 34. You could not state? A. No, sir.

X. Q. 35. Have they manufactured it more than once?

A. Yes.

X. Q. 36. Every year?

A. I can't say that they manufacture it every year.

X. Q. 37. How much do they manufacture in one year, according to your recollection, in any one year.

A. I can't state; it was so long ago that we started to manufacture.

X. Q. 38. You can't remember, then, how much was manufactured? A. No, sir.

X. Q. 39. Because it was so long ago?

A. Well, they have manufactured it for a long time.

X. Q. 40. They have manufactured about the same amount every year? A. No, sir.

X. Q. 41. What has been the variation?

A. Well, fruit juices don't sell so much now as they used to.

X. Q. 42. Well, when they were selling well, what was the variation?

A. Well, I can't state that. There are a great many of these juices, that we manufacture and ship East to various firms.

X. Q. 43. Do you remember any sale of juices having been made of this fig juice?

A. Not of my own personal knowledge; no, sir.





